## INDEX TO APPENDIX CONTENTS

**Description of Document**: **Page**

Sixth Circuit's 06/23/2003 "**ORDER**" denying Akers' "Motion for Reconsideration" of 05/29/2003 "ORDER" rejecting Akers' "Petition for En Banc Determination" .....1

Sixth Circuit's "**MANDATE**" with respect to Its "**ORDER**" of 05/02/2003 affirming Judgement of U. S. District Court for Eastern District of Kentucky, i.e., "DISMISSING" entire case "with prejudice", issued 06/02/03.....2

Sixth Circuit's "**ORDER**", entered 05/29/2003, rejecting Akers' 05/19/2003 "Petition for En Banc Determination", as "untimely" .....4

Sixth Circuit's "**ORDER**", entered 05/02/2003, affirming Judgement of U. S. District Court for the Eastern District of Kentucky, i.e., "DISMISSING" entire case.....5

"**JUDGEMENT**" & contemporaneous "**MEMORANDUM OPINION AND ORDER**", entered in U. S. District Court for the Eastern District of Kentucky on 09/26/2003, and "DISMISSING" entire case "**with prejudice**".....10

Sixth Circuit's "**ORDER**" denying "Stay of Mandate", before: JJ. KENNEDY and DAUGHTREY; BELL (sitting by designation), U. S. Court of Appeals for Sixth Circuit, as entered 02/21/2002.....50

Sixth Circuit's "**ORDER**" [dismissing Akers' previous appeal (Case No. 01-6243 therein)], before: JJ. KENNEDY and DAUGHTREY; BELL (sitting by designation), entered 01/24/2002.....51

"**ORDER**" and contemporaneous "**MEMORANDUM**" transferring case to Eastern District of Kentucky, entered 09/18/2003 by Chief Judge Robert L. Echols, U. S. District Court for Middle Tennessee District-Nashville Division.....53

Akers' "**MOTION FOR RECONSIDERATION**" Sixth Circuit's "**ORDER**", entered 05/29/2003, rejecting as "untimely" Akers' 05/19/2003 "Petition for En Banc Determination", as "untimely", filed 06/05/2003.....62

Akers' "**MOTION FOR LEAVE TO FILE AMENDED PETITION FOR EN BANC DETERMINATION**" with respect to Sixth Circuit's "**ORDER**" affirming Judgement of U. S. District Court for the Eastern District of Kentucky (i.e., "DISMISSING" entire case "with prejudice), filed 06/05/2003.....69

Akers' 06/05/2003 "**AMENDED PETITION FOR EN BANC DETERMINATION**" with respect to the Sixth Circuit's "**ORDER**" affirming Judgement of U. S. District Court for Eastern District of Kentucky (i.e., "DISMISSING" entire case "with prejudice").....74

"**FINAL REPLY BRIEF FOR PLAINTIFF-APPELLANT**" with respect to Sixth Circuit Case No. 02-6235, as filed and served by Akers on 02/28/2003.....97

"**FINAL BRIEF FOR PLAINTIFF- APPELLANT**" with respect to Sixth Circuit Case No. 02-6235, as filed and served by Akers on 02/28/2003.....130

Akers' "**NOTICE OF APPEAL TO UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT**", as filed and served by Akers on 10/03/2003, from the **JUDGEMENT**" entered in U. S. District Court for the Eastern District of Kentucky on 09/26/2003.....187

Akers' "**RESPONSE & OBJECTIONS TO: 'RE-NOTICE AND RENEWAL OF DEFENDANT CAROLYN P. BISHOP'S MOTION TO DISMISS'**" (D.E. #43, Case No. 5:02 cv0162), filed and served on 05/09/2003.....191

Akers' "**MOTION TO STRIKE; and MOTION TO STAY PROCEEDINGS PENDING DETERMINATION OF 'VENUE' BY UNITED STATES SUPREME COURT**", entered 05/13/2003.....252

Akers' "**MEMORANDUM & MEMORANDUM OF LAW [in support of] 'MOTION TO STRIKE; and MOTION TO STAY PROCEEDINGS PENDING DETERMINATION OF 'VENUE' BY UNITED STATES SUPREME COURT'**", entered 05/13/2003.....261

Akers' "**PETITION FOR WRIT OF CERTIORARI** [Case No. 01-6243]" as filed with the United States Supreme Court on 04/24/2002.....305

Akers' "**PETITION FOR STAY OF MANDATE**" of with transfer of Case No 3:00cv1142 from the Middle District of Tennessee-Nashville Division to Eastern District of Kentucky, at Lexington, filed and served on 02/11/2002.....344

"**FINAL BRIEF FOR PLAINTIFF- APPELLANT**" with respect to Sixth Circuit Case No. 01-6243, as filed and served by Akers on 02/11/2003.....130

Akers' "**RESPONSE AND OBJECTIONS TO: 'MOTION OF [Appellees Pamela Miller and Lexington-Fayette Urban County Government] TO DISMISS AND [THE ACCOMPANYING MOTION TO STAY PROCEEDINGS PENDING MOTIONS TO DISMISS**", entered 12/26/2001.....396

Akers' "**NOTICE OF APPEAL TO UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT**", from the "ORDER" of transfer of Case No 3:00cv1142 from the Middle District of Tennessee, at Nashville, to Eastern District of Kentucky, at Lexington, as filed, served, and entered 09/21/2001.....423

Akers' "**APPELLANT'S RESPONSE TO: MOTION OF APPELLEE, JERRY L. KELLY, TO DISMISS APPEAL** [Case No. 01-6243]", as filed and served on 11/30/2001.....426

Akers' "**MEMORANDUM & MEMORANDUM OF LAW**" in support of Akers' Complaint in U. S. District Court for the Middle Tennessee District, at Nashville, [Case No. 3:00cv1142 therein, as filed on 11/21/2000.....431

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## CERTIFICATION OF COMPLIANCE & AUTHENTICITY

**PLAINTIFF-PETITIONER**, James G. Akers, **without counsel** in strict accordance with TITLE 28 U.S.C. § 1654, on this 31st day of July, 2002, does hereby certify that the hereinabove documents as bound herewith and indexed above, are copies of the same documents contained within my records with respect to "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" as filed in U. S. District Court for the Middle Tennessee District-Nashville Division [Case No. 3:00-1142], U. S. Court of Appeals for the Sixth Circuit [Case No. 01cv6243]; U. S. Supeme Court [Case No. 02-1619], U. S. District Court for the Eastern District of Kentucky [Case No. 5:02cv0162], and U. S. Court of Appeals for the Sixth Circuit [Case No. 02-6235]; (2) that I personally supervised reproduction of the same in strict accordance with U. S. Supreme Court Rule 33.2; & (3) all such "EXHIBITS" are included herein only for that purpose set forth in United States Supreme Court Rule 14.1(f) & (i).

**JAMES G. AKERS, Plaintiff-Petitioner**
POST OFFICE BOX 3648
BRENTWOOD, TENNESSEE 37024

No. 02-6235

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

**FILED**
JUN 23, 2003
LEONARD GREEN, Clerk

JAMES G. AKERS,

Plaintiff-Appellant,

v.

CAROLYN P. BISHOP, et al,

Defendants-Appellees.

**ORDER**

Upon consideration of appellant's motion to reconsider the order of May 29, 2003 rejecting his untimely petition for rehearing in banc for filing and motion to file an amended petition for rehearing en banc,

It is ORDERED that the motions be and they hereby are DENIED.

ENTERED BY ORDER OF THE COURT

s/ Leonard Green (by blh)
Leonard Green, Clerk

[END OF DOCUMENT]

**UNITED STATES COURT OF APPEALS**
**FOR THE SIXTH CIRCUIT**

---

No. 02-6235

---

Filed: June 2, 2003

JAMES G. AKERS

Plaintiff-Appellant

v.

CAROLYN P. BISHOP; DORIS FLEMING; ALLEN I. RUSHING; JOHN DOES, Sued as "CBT Does 1-40, known only as that group of persons at Central Bank & Trust Company, Inc., and "associated-in-fact"; TODD M. LAYNE; DONALD RAY SHANNON; JERRY L. KELLY; JOHN DOES, Sued as SCC Does 1-50, known only as a group of persons at ) at the Southland Christian Church of Lexington, Inc., and "associated-in-fact"; JOHN VAUGHN, M.D.; THOMAS D. CLARK; KATHERINE H. WITT; JOHN DOES, Sued as FCS Does, known only as a group of persons at the Fayette, Kentucky County Sheriff's Office", associated-in-fact"; PAMELA MILLER; JOHN DOES, sued as LFG Does 1-60, known only as that group of individual persons at the Lexington-Fayette (Kentucky) Urban County Government, "associated-in-fact"; LOU A. RED CORN; JOHN DOES, Sued as CAO Does 1-20, known only as a group of persons at office of Fayette, Kentucky, Circuit Court Clerk ", associated-in-fact"; JOHN DOES, Sued as FCC Does 1-10, known only as group of persons at office of Fayette, Kentucky Circuit Court, "associated-in-fact"; REBECCA M. OVERSTREET; CINDY G. SWARTZ; ERNEST W. WILLIAMS; TODD D. FERGUSON; PAMELA D. GOODWINE; JOHN DOES, Sued as "The Association-in-Fact" (comprised of all above-named "persons", jointly and severally, herein "Associated-in-Fact")

Defendants-Appellees

**MANDATE**

Pursuant to the court's disposition that was filed 5/2/03 the mandate for this case hereby issues today.

A True Copy

COSTS: NONE

Attest:

s/ L. K. (illegible)
Deputy Clerk

[END OF DOCUMENT]

No. 02-6235

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

| | | |
|---|---|---|
| JAMES G. AKERS, | ) | **FILED** |
| | ) | MAY 29, 2003 |
| Plaintiff-Appellant, | ) | LEONARD GREEN, Clerk |
| | ) | |
| v. | ) | **ORDER** |
| | ) | |
| | ) | |
| CAROLYN P. BISHOP, et al, | ) | |
| Defendants-Appellees. | ) | |
| | ) | |

Upon consideration of the untimely petition for rehearing en banc from appellant,

It is ORDERED that the petition not be accepted for filing.

ENTERED BY ORDER OF THE COURT

s/ Leonard Green (by blh)
Leonard Green, Clerk

[END OF DOCUMENT]

No. 02-6235

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JAMES G. AKERS,

Plaintiff-Appellant,

v.

CAROLYN P. BISHOP; DORIS FLEMING; ALLEN I. RUSHING; JOHN DOES, Sued as "CBT Does 1-40, known only as that group of persons at Central Bank & Trust Company, Inc., and "associated-in-fact"; TODD M. LAYNE; DONALD RAY SHANNON; JERRY L. KELLY; JOHN DOES, Sued as SCC Does 1-50, known only as a group of persons at at the Southland Christian Church of Lexington, Inc., and "associated-in-fact"; JOHN VAUGHN, M.D.; THOMAS D. CLARK; KATHERINE H. WITT; JOHN DOES, Sued as FCS Does, known only as a group of persons at the Fayette, Kentucky County Sheriff's Office", associated-in-fact"; PAMELA MILLER; JOHN DOES, sued as LFG Does 1-60) 60, known only as that

**FILED**
MAY 2, 2003
LEONARD GREEN, Clerk

**ORDER**

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

Sixth Circuit Rule 28(g) limits citation to specific Situations. Please see rule 28(g) before citing in a proceeding in a court in the Sixth Circuit. If cited, a copy must be served on other parties and the Court.

This notice is to be prominently displayed if this decision is reproduced.

group of individual persons )
at the Lexington-Fayette )
(Kentucky) Urban County )
Government, "associated-in- )
fact"; LOU A. RED CORN; )
JOHN DOES, Sued as CAO )
Does 1-20, known only as a )
group of persons at office of )
Fayette, Kentucky, Circuit )
Court Clerk ", associated-in- )
fact"; JOHN DOES, Sued as )
FCC Does 1-10, known only )
as group of persons at office )
of Fayette, Kentucky Circuit )
Court, "associated-in-fact"; )
REBECCA M. OVERSTREET;)
CINDY G. SWARTZ; )
ERNEST W. WILLIAMS; )
TODD D. FERGUSON; )
PAMELA D. GOODWINE; )

---

No. 02-6235
-2-

JOHN DOES, Sued as "The )
Association-in-Fact" )
(comprised of all above- )
named "persons", jointly )
and severally, as herein )
"Associated-in-Fact"), )
)
Defendants-Appellees)

Before: CLAY and GIBBONS, Circuit Judges; CLELAND, District Judge.*

James G. Akers, a Kentucky resident proceeding pro se, appeals the district court order dismissing his action filed pursuant to 42 U.S. C. § § 1983 and 1985, and the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § §1951-68. This case has been referred to a panel of the court pursuant to Rule 349(j)(i), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Seeking monetary relief, Akers sued his former wife Carolyn P. Bishop, fifteen named defendants, and six group of "John Does" defendants in a 134-page complaint. The defendants included judges, prosecutors, a mayor, a sheriff, court employees, attorneys, a church counselor, and people who testified as witnesses at various stages of domestic relations and criminal proceedings involving Akers and his former wife. Akers alleged that the defendants conspired to violate his civil rights and caused him to be imprisoned unlawfully and to suffer injuries to person and property. Akers filed his complaint in the United States District Court for the Middle District of Tennessee. The court transferred the case to the Eastern District of Kentucky becasue the events giving rise to the lawsuit took place in and around Lexington, Kentucky. Akers appealed the transfer, and this court dismissed the appeal. The defendants filed motions to dismiss. The district court granted the motions and dismissed the case in its entirety.

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*The honorable Robert H. Cleland, United States District Judge for the Eastern District of Michigan, sitting by designation.

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In his appeal, Akers argues that venue was proper in Tennessee and that the district court erred in each of its rulings on the merits of his case.

Upon review, we affirm the district court's judgement for the reasons stated by the district court. In 1994, Akers' former wife Bishop obtained an emergency protective order (EPO) against Akers and began proceedings to dissolve their marriage. Bishop alleged that Akers struck and threatened her. Akers was arrested for violating the EPO and contempt of court, and he was later charged with assault and stalking. He was convicted of assault and stalking in 1996, but the Kentucky Court of Appeals reversed the convictions and remanded the case for a new trial. Akers was convicted of both charges after the second trial. In May 2000, the appellate court affirmed the stalking conviction but again reversed the assault conviction. Akers pleaded guilty to the offense of assault under extreme emotional disturbance in July 2000. While his criminal appeal was pending in 1999, Akers filed a civil rights action against five of the same defendants in this case, and a habeas corpus petition. The district court dismissed the civil rights action sua sponte for failure to state a claim and denied the habeas petition. Akers did not appeal either decision.

First, we conclude that venue was proper in Kentucky and improper in Tennessee because substantial part of the events giving rise to Akers' claims occurred in Lexington, Kentucky. See 28 U.S.C. § 1391(b).

Second, we agree with the district court that Akers could not seek damages for his criminal convictions through a civil rights of RICO action. *See Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994); *Hermansen v. Chandler*, No. 99-5943, 2000 WL 554058, at *2 (6th Cir. Apr. 28, 2000); *Stepehnson v. Reno*, 28 F. 3d 26, 27-28 (5th Cir. 1994). Although the Kentucky Court of Appeals found error in both of his trials, Akers now stands convicted of the charges he claims were procured through a conspiracy among the defendants. Because these convictions have not been reversed or declared invalid, Akers cannot sue for damages in a civil rights or RICO action.

Third, the district court properly held that Akers had no claim for malicious prosecution. A claim of malicious prosecution is actionable under § 1983 where all elements of the state law tort are present and probable cause was lacking as defined by Fourth amendment jurisprudence. See *Albright v.*

*Oliver*, 510 U.S. 266, 271-74 (1994); *Coogan v. City of Wixom*, 820 F. 2d 170, 174 (6th Cir. 1987). Under Kentucky law, a plaintiff bringing a malicious prosecution claim must prove, among other things, that the prosecution terminated in his favor. *Broaddus v. Campbell*, 911 S.W..2d 281,283 (Ky. Ct. app. 1995. Akers cannot satisfy this element because a jury convicted him of stalking and he pleaded guilty to assault.

Fourth, the district court also properly held that, to the extent Akers was challenging the results of his state court conviction, the court lacked jurisdiction over his claims. *See district of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 486 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.s. 413, 416 (1923). Under the *Rooker-Feldman* doctrine, a federal district court may not hear an appeal of a case already litigated in state court. In order for Akers to prevail this action, he would have had to have shown that the state courts erred by affirming his conviction for stalking and accepting his guilty plea for assault. Because Akers federal claims can only succeed to the extent that the state courts were wrong, his claims are inextricably intertwined with the state court decision. *See Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1,25 (1987) (Marshall, J.., concurring). Accordingly, the district court lacked jurisdiction over Akers' claims. *See Feldmann*, 460 U.S. at 486,; *Rooker*, 263 U.S. at 416. Construing the complaint is a light most favorable to Akers and accepting all of his factual allegations are true, he can prove no set of facts in support of his claims that would entitle him to relief. *See Sistruntk v. City of Strongsville*, 99 F.3d 194, 197 (6th Cir. 1996). For the foregoing reasons, we affirm the district court's judgement. Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

s/ LEONARD GREEN
Clerk

[END OFDOCUMENT]

Eastern District of Kentucky
FILED
SEP 26 2002

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON

CIVIL ACTION NO. 02-CV-162-JBC

JAMES G. AKERS PLAINTIFF

VS: **JUDGEMENT**

CAROLYN P. BISHOP, ET AL. DEFENDANTS

In accordance with the Memorandum Opinion and Order Dismissing, entered contemporaneously with this Judgement, the court hereby ORDERS AND ADJUDGES:

(1) The motions to Dismiss filed in the Middle District of Tennessee by Defendants Bishops, Williams, Layne, and Shannon, Vaughn, Clark/Overstreet/Goodwine/Red Corn/Swartz/Ferguson, Witt and Sheriff Does, Miller, Fleming, Kelly and Rushing are SUSTAINED.

(2) The following Motions to Dismiss and/or Renewed Motions to Dismiss filed on behalf of various defendants in this court are GRANTED:

(a) The Motion for Judgement on the Pleadings filed by Defendants Clark/Overstreet/Goodwine/Red Corn/Swartz/Ferguson [Record No. 2];

(b) The Renewed Motion to Dismiss filed by Defendant Katherine Witt [Records No. 3];

(c) The Motion to Dismiss filed by Defendant Jerry L. Kelly [Record No 6];

(d) The Renewed Motion to Dismiss filed by Defendants Todd M. Layne and Donald Ray Shannon [Record No. 11];

(e) The Motion to Dismiss filed by Defendant Doris Fleming [Record No. 14];

(f) The renewed Motion to Dismiss filed by Defendant Pamela Miller [Record No. 19];

(g) The Renewed Motion to Dismiss filed by defendants John Vaughn and allen J. Rushing [Record No 20].

(3) The Motions of Plaintiff; (i) to Strike, (ii) for Default Judgement, and (iii) for Summary Judgement [Record Nos. 5,7,12,25,28, and 32] are DENIED.

(4) The Agreed Motion of Defendant Ernest Williams to Substitute Counsel [Record No. 30] is GRANTED.

(5) The motions filed by various defendants for Enlargement of Time and/or to Stay Discovery [Record Nos. 15,20,23,26, and 34] are DENIED AS MOOT.

(6) This action (02-CV-162-JBC) is DISMISSED, with prejudice.

(7) Judgement is entered on behalf of the following named defendants, in their individual and official capacities, where specified by Plaintiff in the Complaint: **Carolyn Bishop**; **Thomas D. Clark**, Fayette Circuit Judge, former Fayette District Judge, **Commonwealth Attorney's Office**, Fayette County, Kentucky; **Central Bank & Trust Co.** (and John Doe Defendants therein); **Fayette County Circuit Court**; **Fayette County, KY Sheriff's Office**; **Todd D. Ferguson**, Assistant Attorney General, State of Kentucky; **Doris Fleming**; **Pamela D. Goodwine**, Fayette County District Judge; **Todd M. Layne**; **Lexington Fayette Urban County Government** (and **John Doe Defendants** therein); **Jerry L. Kelly**, **Pamela Miller**, Mayor of Lexington, KY; **Rebecca Overstreet**, Fayette Circuit Judge; **Lou A. Red Corn**, Assistant Fayette County Commonwealth...

-2-

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...Attorney; **Allen Rushing**; **Southland Christian Church** (and **John Doe defendants** therein); **Donald Ray Shannon**; **Cindy G. Swartz**, Appellate Attorney in Attorney General of Kentucky's Office; **John Vaughn, M.D.**; **Ernest W. Williams**; **Katherine Witt**, Sheriff of Fayett County; and the "**Association-**

**in-Fact,"** comprised of all named defendants joint and severally.

(9) This is a FINAL and APPEALABLE order.

This the 25th day of September, 2002.

s/Jennifer B. Coffman
JENNIFER B. COFFMAN, JUDGE

Date of Entry of Service:



[END OFDOCUMENT]

Eastern District of Kentucky
FILED
SEP 26 2002

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON

CIVIL ACTION NO. 02-CV0162-JBC

JAMES G. AKERS PLAINTIFF

VS: **MEMORANDUM OPINION AND ORDER, DISMISSING**

CAROLYN P. BISHOP, ET AL.

INTRODUCTION

The plaintiff, James G. Akers ("Akers"), filed a complaint, *pro se*, in the Middle District of Tennessee, alleging numerous violations of 42 U.S.C. § 1983, 42 U.S.C. § 1985, and 18 U.S.C.§ 1964, arising from various criminal and domestic relations proceeding initiated against him in the Commonwealth of Kentucky Fayette Circuit and District Courts over and eight-year period form 1994-2000. Akers named twenty-three (23) individual persons and/or entities as defendants.

Numerous defendants filed Motions to Dismiss, or in the alternative, to Transfer Venue to this district because the events of which Akers complains transpired here. Over Akers''s objections, the District Court for the Middle District of Tennessee transferred this proceeding to the Eastern District of Kentucky due to the inadequate contacts with the Middle District of Tennessee. On Appeal of this transfer order, the Sixth Circuit dismissed the case. Akers appealed that dismissal to the United State Supreme Court. On June 24, 2002, the Supreme Court denied Akers' Petition for Writ of Certiorari.

NAMED DEFENDANTS

Akers has named as defendants, the following persons: (1) Carolyn Bishop, Akers' former spouse; (2) Thomas D. Clark, Fayette Circuit Judge, former Fayette District Judge; (3) the Commonwealth Attorney's Office, Fayette County, Kentucky; (4) Central Bank & Trust Co., Lexington, KY, (and John Doe defendants therein), Carolyn Bishop's employer; (5) the Fayette County Circuit Court; (6) the Fayette County, KY Sheriff's Office; (7) Todd D. Ferguson, Assistant Attorney General, State of Kentucky; (8)Doris Fleming, co-worker of Carolyn Bishop/trial witness; (9) Pamela D. Goodwine, Fayette County District Judge; (10) Todd M. Layne, Counselor at Southland Christian Church, Nicholasville, KY; (11) the Lexington Fayette Urban County Government and John Does, defendants therein; (12) Jerry L. Kelly, Carolyn Bishop's divorce attorney; (13) Pamela Miller, Mayor of Lexington, KY; (14) Rebecca Overstreet, /Fayette Circuit Judge; (15) Lou A. Red Corn, Assistant Fayette County Commonwealth Attorney; (16) Allen Rushing, Carolyn Bishop's former boss at Central Bank, (17) Southland Christian Church and John Does defendants therein; (18) Donald Ray Shannon, acquaintance of Carolyn Bishop;; (19) Cindy G. Swartz, Appellate Attorney in Attorney General of Kentucky's Office; (20) John Vaughn, M.D., Carolyn Bishop's physician/trial witness; (21) Ernest W. Williams, one of Akers' criminal defense attorneys from Tennessee; (22) Katherine Witt, Sheriff of Fayette County; and (23) and "Association-in-Fact," comprised of all named defendants jointly and severally.

RELIEF REQUESTED

Akers seeks to recover from all of the defendants, in various groupings, jointly and severally and/or individually and corporately, monetary damages exceeding $14 million; interest; costs; attorneys' fee (if any); and trial by jury.

PRIOR LITIGATION IN THIS COURT

The court takes judicial notice of the typed, fourteen-page complaint Akers filed *pro se* in this court on May 10, 1999, being Civil Action 99-173 ("the 1999 civil rights action"). Akers named as defendants in the 1999 civil rights action several of the defendants he named in the instant proceeding, to wit: Bishop, Overstreet, Swartz, Red Corn, and Clark.[1]

The complaint Akers filed in the instant proceeding arises in substantial part from the same facts and circumstances as the 1999 civil rights action, which Akers filed while confined in the Eastern Kentucky Correction Complex. In the 1999 civil rights action, Akers alleged that he had been maliciously prosecuted in the Fayette District and Circuit Courts and demanded damages in excess of $30,000,000.00 from the defendants. Akers alleged that Clark, Overstreet, Red Corn, and other named defendants therein, all engaged in conspiratorial activities violative of Akers' civil right, resulting in his felony convictions in 1996, and on retrial in 1998 on charges of assaulting and stalking his former spouse, Carolyn Bishop, in May of 1994. The facts span the period between May 1994 and October 1998, and are summarized in this court's May 1999 Memorandum Opinion and Order ("the 1999 Civil Rights Order"), and are adopted and incorporated herein by reference. Pursuant to the 1999 civil Rights Order, this Court dismissed the 1999 civil rights action *sua sponte* on grounds of: (1) prosecutorial immunity with respect to defendants Red Corn and Swartz;[2] (2) Eleventh Amendment immunity with respect to defendant, the Commonwealth of...

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[1] Akers also named Fayette County Attorney Margaret H. Kannensohn and the Commonwealth Of Kentucky as defendants in the 1999 action. Akers did not name either as defendants in the instant proceeding.

[2] Akers named Cindy Swartz as a defendant in the 1999 action because she had filed a brief on behalf of the Kentucky Attorney General with respect to the appeal Akers filed when he was convicted for assault and stalking the first time, 1996, in Fayette Circuit Court.

...Kentucky; (3) judicial immunity with respect to defendants Clark and Overstreet; and (4) failure to state a § 1983 claim against defendants Bishop. Akers did not appeal the 1999 Civil Rights Order.

Akers's marital discord between 1994 and 1998, and resultant assault and stalking convictions, set forth in the 1999 civil rights action, are the *same* facts and circumstances Akers alleges in the instant complaint, *except* that in the instant action Akers has: (1) informed the court of developments in his criminal and appellate proceedings subsequent to May, 1999; (2) alleged additional and different federal statutory violations of his constitutional rights under 42 U.S.C. § 1985 and RICO; and (3) named additional defendants.

1999 HABEAS CORPUS PETITION

On June 28, 1999, five weeks after this court dismissed the 1999 civil rights action, Akers filed a petition in this court for habeas corpus relief pursuant to 28 U.S.C.§ 2241 and 28 U.S.C.§ 2254, which was docketed as Civil Case No 99-CV-242 and was styled as "James Gorden Akers v. George Million, Warden Eastern Kentucky corrections Complex et al" ("the 1999 habeas corpus action"). The petition again reiterated all of the events concerning Akers' and Bishops marital discord and Akers' subsequent criminal prosecutions in the Fayette District and Circuit Courts between May, 1994 and June, 1999. Akers sought an order from this court releasing him from the state custody on bond during the pendency of his appeal of the 1998 assault and stalking convictions, which appeal was then pending in the Kentucky Court of Appeals.[3] On February 2, 2000, this court entered a judgement dismissing Akers' habeas corpus petition. Akers did not appeal this court's dismissal of the 1999 habeas corpus proceeding.

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[3] The Fayette Circuit Court had denied Akers' request for release on bond pending appeal, as had the Kentucky Court of Appeals by order entered March 8, 1999.

FACTUAL ALLEGATIONS OF INSTANT COMPLAINT

Akers' submission in the instant case consist of: (1) a one hundred-thirty-four (134) page complaint filed in the Middle district of Tennessee; (2) a "Memorandum & Memorandum of Law," one hundred seventy-eight (178) pages in length; and (3) a two-volume document entitled "Appendix/Relevant Exhibits," which volumes are six hundred thirty-eight (638) pages in the aggregate.

The following is a brief summary and/or construction of Akers allegations in the instant complaint and accompanying material, without constituting a full reiteration of the facts contained in the 1999 Civil Rights Order.

After a series of domestic arguments and altercations between Akers and Bishop, while married in 1994, Bishop obtained Emergency Protective Orders in the Fayette District Court against Akers. Bishop perceived that Akers was intentionally disregarding the terms of the EPO because of constant phone calls and threats of physical harm she was receiving from Akers'. Akers was held in contempt of court for violating the EPO and was eventually indicted in 1995 in the Fayette Circuit Court on charges of assault and stalking. Akers was extradited from Tennessee to stand trial on the assault and stalking charges in Kentucky. Akers was denied bail by Defendant Rebecca Overstreet, who was the presiding Fayette Circuit Court Judge on the assault and stalking charges.

Akers alleges that in 1996, he was convicted in the Fayette Circuit Court (Judge Rebecca Overstreet presiding) for the assault and stalking of Defendant Carolyn Bishop. Akers appealed his conviction to the Kentucky Court of Appeals which, in 1998, reversed his conviction and remanded the charges for retrial, citing error by Overstreet. Akers was tried in October, 1998, on the same charges and again convicted of both counts, although the jury recommended a slightly more lenient sentence on remand. Akers again appealed the 1998 conviction to the Kentucky Court of Appeals.

In May 1999, Akers filed the 1999 civil rights action in this court, which this court dismissed as discussed *supra*. On May 19, 2000, the Kentucky Court of Appeals entered and order affirming the 1998 stalking conviction, but again ruled theat continued evidentiary errors Overstreet committed after the case had been remanded to her in 1998 justified yet a second reversal of the assault conviction. On July 7, 2000, Akers pled guilty to "Assault under extreme emotional disturbance" in the Fayette Circuit Court.

The instant complaint, as noted, refers to all of the Akers/Bishop marital problems, domestic violence episode, and criminal proceedings which ensued between May 1994 and November 1998, all of which had already been provided to the court in the 1999 civil right action. The court notes that the first 89 pages of the 94 pages of facts in the instant complaint reiterate the facts contained in Akers' complaint in the 1999 civil rights action and in the 1999 habeas corpus petition. Not until page 89 does Akers allege *new facts* not contained in the two preceding actions. Akers expanded the number of defendants in the instant complaint and asserted additional theories of wrongdoing on the part of the defendants in the instant complaint ans asserted additional theories of wrongdoing on the part of the defendants he had named in the 1999 civil rights action. However, in the instant submission, Akers elaborates in greater detail on every event between 1994 and 1998.[4]

Akers contends he was maliciously prosecuted and unlawfully imprisoned for assaulting and stalking his former spouse, and that he was the victim of conspiracies against him, comprised of...

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[4] Akers discusses in detail the May4-5, 1994 physical altercations between Bishop and Akers; Akers; unhappiness over the role he perceived that Southland Christian Church ("SCC") played in the break-up of his marriage; Akers' appearance in the Fayette District Court on domestic violence charges; issuance of Emergency protective order against Akers; the discussion of phone calls to Bishop's then-place of employment (Central Bank & Trust Co.); Akers assertion that Defendants Allen Rushing and Doris Fleming at Central Bank were conspiring with Bishop to effect Akers' imprisonment; that counselors at SCC were conspiring with Bishop to

imprison Akers and deprive him of constitutional rights; his 1995 extradition from Tennessee; his 1995 indictment in Fayette Circuit Court,; his 1996 conviction for assault and stalking; the Kentucky Court of Appeal's 1998 reversal and remand of his 1996§ conviction; his retrial in Fayette Circuit Court in 1998 and resultant conviction in late 1998 on the same charges. Akers has submitted to the court a 638 page Appendix containing apparently every document pertaining to the Fayette District Court EPO/Domestic Violence proceeding and his Fayette Circuit Court felony prosecutions.

Included in the 638-page, two-volume Appendix are trial exhibits, interlocutory orders, pre-trial motions and responses thereto, motions and rulings relative to bond and bail requests, invoices for legal services from Akers' attorneys, correspondence of various nature, newspaper articles critical to Overstreet, and test results. Akers 134-page complaint itself contains, in numerous places, pages and pages of excerpts of testimony from his Fayette District and Circuit Court proceeding and verbatim discussions he alleged occurred between different defendants and Akers.



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various groupings of the named defendants, Akers named as a defendant herein almost anyone he perceived as having any connections to his convictions, except the jurors.

## SUMMARY OF CLAIMS

The thrust of Akers''s allegations concerning the deprivation of his civil rights under § 1985 and RICO patterns of racketeering activity is directed at defendants Bishop, Red Corn, and Overstreet and is apparently premised upon the fact on May 19, 2000, the Kentucky Court of Appeals reversed his 1998 assault conviction (for the second time) and remanded the proceedings. The Kentucky Court of Appeals affirmed the stalking conviction in this opinion. Akers describes almost every ruling Overstreet issued during his 1996 trial and his 1998 retrial as being either fraudulent and/or constituting intentional jury tampering. He alleges that Re Corn and Overstreet acted as co-conspirators with respect to all pretrial and trial evidentiary rulings which Overstreet entered against him, and with respect to all testimony and/or evidence Overstreet admitted at both trials, Akers alleges that all of the named defendants who testified against him at either or both trials (in 1996 and 1998), respectively) acted as conspirators to violate his civil rights.

With respect to Overstreet, Akers' complaint alleges numerous instances of trial court error by Overstreet during and subsequent to his retrial in 1998. Akers alleges Overstreet stated on the record, during a pre-trial proceeding, that she had not read the [February 27, 1998] court of Appeals opinion [reversing and remanding his 1996 convictions] and that, accordingly, Overstreet repeated the same evidentiary errors which she committed in 1996. Akers alleges that in another pre-trial proceeding, after this case was remanded in 1998, Overstreet denied him the right to *pro se* representation and the "right to be heard", referring to a comment Overstreet made on the record consisting of "Besides, I think I already know how the jury is going to rule in this case."

-7-

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Akers alleges that Overstreet committed additional errors and rendered numerous improper and unfair rulings during his October, 1998 retrial. All of these are set forth with particularity on pp. 73-88 of Akers' complaint. These allegations are basically more detailed versions of the facts Akers alleged previously in the 1999 Civil Rights Action.

Akers further alleged that the attorneys employed by the Attorney General of Kentucky participated in "chain like function" in the furtherance of conspiracies initiated by Bishop, Vaughn, Red Corn, and Overstreet (and other named defendants) by filing briefs on behalf of the Commonwealth of Kentucky when Akers appealed his assault convictions in 1996 and 1998.

Akers contends that Overstreet and Red Corn (primarily), and the other named defendants (secondarily) conspired to and did not violate his civil rights in violation of § 1983 and § 1985(3), relying heavily on the Kentucky Court of Appeal's May 19, 2000 "Opinion Affirming in Part, Reversing in Part."[5] Akers provided only excerpts of this opinion to this court and incorporated the excerpts into his complaint at page 92. Akers stated that the Court of appeal criticized Overstreet for failing to read, much less follow, [the Court of Appeals]

instruction on remand; failed to exclude evidence of certain bad acts [of Akers']; erred in introducing evidence of Akers' stalking of Bishop while being tried for assault; failed to properly analyze bad acts evidence of Bell [v. Commonwealth, 875 S. W.. 2d at 889, 890]; and failed to conduct separate trials on stalking and assault during the October, 1998 retrial. The Kentucky Court of Appeals concluded these errors justified reversing Akers' 1998 assault conviction, but it affirmed the stalking conviction.

Akers states that he pled guilty on July 7, 2000 to Assault under Extreme Emotional Disturbance, a Class D. Felony,' under threat of the "tyranny and oppression of Red Corn and

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[5] Akers did not provided to this court a full and complete copy of this May 19, 2000 opinion. Akers inserted the "Appendix" and labeled as :"Exhibit DDDD," what appears to be pages 1,15,16, and 20-23 of the May 19, 2000 Kentucky Court of Appeals Opinion.



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Overstreet for and astounding third time around...as apparently, the only means of escaping the 'oppression' of Bishop, Red Corn, Overstreet, et al." Akers further alleges as far as this court can construe from page 94 of his complaint, that he was imprisoned 1,094 days longer that her could have "lawfully" been imprisoned as a result of any alleged "criminal conduct."[6]

Akers alleges numerous injuries as a result of various violations of his civil rights, and RICO provision, by all of the named defendants herein, including but not limited to:(1) serious physical injury and threats thereof (and death); (2) life-threatening and permanently debilitating disease; (3) extortion and/or blackmail; (4) irreparable injury to his personal business and reputation and career; (5) diminished quality of life; (6) loss of income to business; (7) 40% permanent loss to his hearing; and (8) business losses to his companies; (a) "Coleman, Akers & Akers" in the amount of $860,000.00, and (b) "Cadre and/or "Akers & Akers of Tennessee, inc." in the amount of $3,272,000.00.

Alleged Conspiracies

Akers alleges the existence of fourteen (14) different conspiracies devised against him, in violations of 42 U.S.C. § § 1983 and 1985(2) and (3). These conspiracies are comprised of a mixture of different named defendants alleged to have participated in multiple conspiracies.

Akers alleges the existence of nine (9) separate RICO violations committed by various groupings of named defendants, specifying in detail particular "predicate acts" by the defendants with respect to each alleged RICO violation. Akers alleges, among other things, that the specified defendants formed enterprises engaged in numerous "patterns of racketeering activity." which activities had and maintained effects on "interstate and foreign commerce" in violation of 18 U.S.C.

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[6] Akers alleges on page 94 of his complaint that he was imprisoned a total 1,335 days as a result of the criminal proceeding discussed in his complaint.



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§ § 1961 and 1962. As examples of "predicate acts", Akers alleges that various of the named defendants were responsible for: (1) kidnapping; (2) unlawful imprisonment; (3) theft by unlawful taking or disposition; (4) tampering with physical evidence; (5) wire fraud; (6) mail fraud; (7) forgery in the second degree; (8) theft by extortion; (9) blackmail; (10) extortion; (11) tampering with a witness; (12) influencing [a] juror generally;; and (13) civil rights intimidation.

Akers alleged that Bishop participated in approximately six of the nine RICO conspiracies, and that Red Corn committed overt action in furtherance of numerous conspiracies in violation of RICO provisions by engaging in two or more predicate acts of tampering with a witness and influencing a juror. Akers mirrors these allegations with respect to Overstreet. Akers alleged in a footnote that the only means by which an attorney in Central Kentucky's legal community can "receive fair

treatment" and avoid being "victimized" in Overstreet's court is to secure Overstreet's recusal by hiring her spouse to represent them, further asserting that Overstreet capitalizes on attorneys recusing her for the "express extortionate purpose of...building the practice of her husband..."

Akers further alleged that Dr. John Vaughn, along with other defendants, was part of a conspiracy designed to prosecute and imprison Akers.[7] Dr. Vaughn was the doctor from whom Carolyn Bishop received medical treatment following the May 4-5, 1994 altercation with Akers, which episode initiated the domestic violence charges resulting in eights years of legal proceedings.

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[7] Akers alleges that Dr. Vaughn was involved in a RICO pattern of racketeering and was engaged in a pattern designed to deprive Akers of his civil rights by reason of billing Carolyn Bishop's insurance company after examining and rendering medical services to Carolyn Bishop. Dr. Vaughn also testified against Akers in Akers' 1998 retrial. He also alleges his own attorney, defendant Williams, and Bishop's divorce attorney, Defendant Kelly, were engaged in prohibited RICO patterns of racketeering in the course of performing isolated legal services on behalf of their respective clients



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MOTION TO DISMISS FILED BY DEFENDANTS

Pending before this court are numerous motions to dismiss filed on behalf of sixteen (16) different defendants.[8] It is clear ffrom the factual and legal analysis of the Middle District of Tennessee's September 18, 2001, Memorandum in support of its Order Transferring Venue that *this* court was the appropriate court to address the merits of defendants' motions to dismiss. Once the Middle District of Tennessee determined that transfer to this district was appropriate, it had not jurisdiction to entertain or address the merits of the defendants' motions to dismiss.

> When a motion for transfer under 28 U.S.C.A. § 1404(a) has been granted, and the papers lodged with the clerk of the transferee court, the transferor court-and the appellate court that has jurisdiction over it-lose all jurisdiction over the case and may not proceed further with regard to it.

Wright, Miller & Cooper, Federal Practice and Procedure: § 3846 (2d ed. 1986).

Thus, the defendants' original motions to dismiss, as well as the renewed motions to dismiss are properly before this court.

Some defendants have filed additional motions requesting stays of discovery and/or enlargement of time in which to file and answer to Akers' complaint, until thirty days after the court addresses the merits of the various motions to dismiss. The judges and prosecutors have filed a supplemental Motion to Dismiss Akers' complaints alleging, among other things, that it fails to comply with Fed. R. Civ. P8's requirement of a "short and plain" statement of the jurisdictional grounds, the basis for relief, and demand sought. The Court agrees that Akers' *pro se* complaint completely violates the spirit of Fed. R. Civ. P. 8, which requires a short and plain statement giving a defendant notice of the claim against him. Akers complaint contains a dissertation of his thoughts...

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[8] As discussed *infra*, after transfer of this proceeding to the Eastern District of Kentucky, some of the defendants herein either renewed their motions to dismiss filed in the Middle District of Tennessee or filed anew a "Motion for Judgement on the Pleading," reiterating defenses asserted previously in Tennessee.



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...and opinions. Defendant Ernest Williams has requested a status conference. All of these additional motions are rendered

moot by reason of the court's opinion, *infra*, dismissing Akers's complaint.

## DISCUSSION

### Standard of Review

*Pro Se* pleadings are held to less stringent standards than those drafted by attorneys. See Cruz v. Beto, 405 U.S. 319 (1972); Haines v. Kerner, 404 U.S. 519 (1972). The allegations in a *pro se* complaint must be taken as true and construed in favor of the plaintiff. Malone v. Colyer, 710 F. 2d 258, 260 (6th Cir. 1983). Even taking all of Akers' allegations as true, as dictated by Malone v. Colyer, this court finds that based upon the numerous defenses and legal doctrines asserted by the defendants, Akers' complaint and accompanying material are frivolous and fail to state a claim upon which relief can be granted.

Fed. R.Civ.P. 12(b) provides for the dismissal of claims and parties for seven listed reasons. A motions to dismiss under Fed. R.Civ.P. 12(b)(6) for failure to state a claim " should not be granted unless it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957). Well-pled allegations must be taken as true and must be construed most favorably toward the non-movant. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). A complaint should be dismissed pursuant to Fed.R.Civ.P.12 (b)(6) only if there is no law to support the claims, if the alleged facts are sufficient to stat a claim, or if on the face of the complaint there is an insurmountable bar to relief. See Rauch v. Day & Night Mfg. Corp., 576 F. 2d 697 (6th Cir. 1978); Westlake v. Lucas, 537 F.2d 857 (6th Cir. 1976). The court finds that Akers' claims are insufficient to state a claim on which relief can be granted and this his complaint should be dismissed with prejudice. The court will address the...

various grounds upon which it concludes Akers' complaint is frivolous and deficient as a matter of law.

I.

DISMISSAL UNDER *HECK V. HUMPHREY*

Reduced to its core, Akers complaint alleges first that nineteen of the named defendants conspired, in various assortments; (1) to deprive Akers of his constitutional rights guaranteed under the Fourth, Fifth, and Fifteenth Amendments of the United States Constitution; (2) to deprive him of his property; (3) to unlawfully imprison him for 1094 days; and (4) to act in concert with each other in a pattern of racketeering activity in violation of RICO statutes.

Akers' complaint against these defendants involved in his state court judicial proceedings is an unambiguous attempt to collaterally attack his two state court criminal convictions and what he describes as "unlawful imprisonment." These state court convictions consists of (1) a 1998 jury conviction for stalking, affirmed on appeal in May, 2000, and (2) a guilty plea Akers entered in July, 2000, to "Assault under Extreme Emotional Disturbance. These conviction have not been reversed or otherwise invalidated, and Akers does not so allege. However, Akers is seeking $14 million in damages from the named defendants on the basis of unlawful imprisonment stemming from two state court convictions he alleges were obtained by fraud, jury tampering, extortion, blackmail, and other specified illegal means.

Heck v. Humphrey, 512 U.s. 477, 114 114 S. Ct. 2364 (1994), operates as a complete bar to Akers' claim. Heck v. Humphrey precludes the recovery of damages under § 1983 for an allegedly unconstitutional conviction or imprisonment, or for the other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, where the plaintiff is unable to prove that the underlying conviction or sentence has been: (1) reversed on direct appeal; (2) expunged by...

...executive order; (3) declared invalid by a state tribunal authorized to make such determination; or (4) called into question by a federal court's issuance of a writ of habeas corpus. Id., 512 U.S. 477 486-87. Neither Akers' 1998 stalking conviction, affirmed on appeal in May, 2000, nor his assault conviction obtained by a guilty plea in July, 2000 has been reversed, expunged or declared invalid by any authorized tribunal. The 1999 habeas corpus action was dismissed. "A claim for damages bearing that relationship to a conviction or sentence that has *not* been so invalidated is not recognizable under § 1983." Id. 512 U.S. at 487. Thus, the principles enunciated in Heck v. Humphrey bar Akers' § 1983, § 1985, and RICO claims against all the named defendants.

Clearly, if Akers were to prevail on any one or all of his civil rights and/or RICO claims against any one or all of the defendants named herein, an anomalous situation would exist whereby Akers could conceivably be recovering damages for actions associated with and resulting from allegedly unconstitutional convictions and imprisonment, while Akers' two state court criminal convictions would contemporaneously remain intact, valid and undisturbed. This is precisely the type of inconsistent result which the United States Supreme Court ruled was prohibited in Heck. It is obvious from the attachments to Akers' 134-page complaint and 160-page memorandum of law that Akers views his complaint as a vehicle by which to relitigate, in full, every aspect of his two convictions and the prison terms he served as a result of his convictions.

The Sixth Circuit Court of Appeals systematically applies the principles enunciated in Heck to not only civil rights plaintiffs whose criminal sentences have not been otherwise reversed or expunged, but also to would-be litigants alleging RICO violations by persons involved in their criminal convictions in state court. See Hermanasen v. Chandler, 211 F. 3d 1269, 2000 WL 554058 (6th Cir. (Ky.)), cert. denied, 531 U.S. 997 (2000) (applying Heck v. Humphrey principle to civil actions under RICO and holding that a federal court should not address RICO claims which...

...necessarily impugn the validity of a state conviction unless the plaintiff has already invalidated the conviction on direct appeal or in a collateral proceeding under 28 U.S.C. § 2254 or § 2255). Hermansen v. Chandler dictates that Akers' RICO claims cannot be maintained where his convictions have not been reversed.

II.

"FAVORABLE TERMINATION" OF A PRIOR CRIMINAL PROCEEDING IS A PREREQUISITE OF A § 1983 MALICIOUS PROSECUTION CLAIM

Akers' lists improper and illegal conduct by defendants which he alleges resulted in his imprisonment. The most significant allegations in Akers' complaint are:

3 ...[t]he Plaintiff Akers was: ...(b)unlawfully imprisoned in May and July, 1994 ...(f) fraudulently and maliciously accused, prosecuted and then imprisoned...from May 22, 1996 until April 15, 1998...

4 ...Akers' was: [from October 28, 1998 until July, 2000] (d) yet again oppressively and unlawfully prosecuted, convicted, and then imprisoned for the very same unconstitutional and fraudulent felony charges...as was the case in May of 1996.

Thus, Akers has labeled his essential claim as 'malicious prosecution' which, he alleges, in turn resulted in his unlawful imprisonment. A plaintiff alleging malicious prosecution and an analogous § 1983 claim must demonstrate that the previous prosecution, alleged to have been malicious, was terminated in favor of the plaintiff. Dunn v. Tennessee, 697 F.2d 121, 126 (6th Cir. 1982), cert. denied, 460 U.S. 1086 (1983) ("...this Court finds that favorable terminations of the prior criminal proceeding marks the point at which a 1983 claim for malicious prosecution accrues."); Singleton v. City of New York, 632 F. 2d 185, 194-195 (2d Cir. 1980), cert denied, 450 U.S. 920 (1981) (plaintiff's claim of deprivation of 1983 civil rights malicious prosecution may not

be stated without alleging and proving that the prosecution terminated in some manner, indicating that plaintiff was not guilty of the offenses charged).

This court, in Cissell v. Hanover Ins., Co., 647 F. Supp. 757, 758 (E.D. Ky. 1986), similarly addressed and defined the parameters of maintainable federal § 1983 claims, expressly relying on Singleton v. City of New York, *supra*, stating as follows:

> It is well established that a prerequisite for recovery in both a common law malicious prosecution action and a federal § 1983 claim analogous to such action is proof that the previous prosecution alleged to be malicious was terminated in favor of the present plaintiff. *Singleton v. City of New York . . .Lendes v. Sutter*, 621 F. Supp. 1197 (D.N.J. 1985).

The Cissell opinion examined the six basic elements required under Kentucky Law for a mailicious prosecution action, the third of which is "the terminations of such proceeding [either civil, criminal or administrative] in [the original] defendant's favor," citing Raine v. Drasin, 621 S.W. 2d 895, 899, (Ky 1981). According to Singleton, *supra*, "p]roceedings are 'terminated in favor of the accused' only when their final disposition is such as to indicate that the accused is not guilty."Id. at 193. 9 See also MacFawn v. Kresler, 666 N.E. 2d 1359 (N.Y. 1996).

Akers bases the instant § 1983, § 1985, and RICO conspiracy complaint on the fact that the Kentucky Court of Appeals reversed his assault and stalking conviction in 1998, and in March, 2000, reversed his subsequent 1998 assault conviction. However, Akers' criminal prosecution on the stalking charge " terminated" on or about June 19, 2000, thirty days after the Court of Appeals rendered its May 19, 2000 opinion affirming the 1998 stalking conviction. Akers filed no further...

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9. There is some case law which imposes a slightly less stringent requirement for establishing "termination in favor of the accused"; Smith-Hunter v. Harvey, 734 N.E. 2d 750 (N.Y. 2000), held that a dismissal of a criminal charge on statutory speedy trial grounds based upon prosecutor's inaction, constituted a "favorable termination." *Cf* Martin v. Adler, 515 N.Y. S. 2d 400, 405 (N.Y. sup Ct 1987) (dismissal for failure to prosecute was not adjudicated on the merits; thus, malicious prosecution claim was barred). The Smith-Hunter v. Harvey opinion noted, however, that is a criminal charge is dismissed out of mercy requested or *accepted by the accused* , there is no "favorable termination." Id. at 753 (emphasis added). In the instant case, it is undisputed that Akers pled guilty to Assault under Extreme Emotional Disturbance, a Class D. Felony, on July 7, 2000.



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appeals after the stalking conviction was affirmed. Akers' criminal prosecution on the assault charge "terminated" on July 7, 2000, when he pled guilty to assault under extreme emotional disturbance. These proceedings did not terminate when the Kentucky Court of Appeals reversed Overstreet, in 1998 and 2000 and remanded the proceedings. They terminated at the conclusion of the stalking appeal (thirty days after May 19, 2000) and when Akers pled guilty to assault under extreme emotional disturbance in July, 2000. Obviously, neither proceeding terminated in Akers' favor.

The 1998 and 2000 Orders and Opinions of the Kentucky Court of Appeals, reversing Akers' convictions and remanding for retrial, did not, on their own, operate as a bases on which Akers can premise his various civil rights and RICO claims. In Smith v. Holtz, 87 F. 3d 108 (3rd Cir. 1996), cert. denied, 519 U.S. 1041, 117 S. Ct 611, 136 L. Ed.2d 536 (1996), Smith sought monetary compensation for his allegedly unconstitutional conviction and imprisonment on murder charges. On direct appeal the Supreme Court of Pennsylvania reversed Smith's conviction on evidentiary grounds and, as in the instant case, remanded for a new trial. Before trial, however, all charges against Smith were dismissed on the basis of newly discovered prosecutorial misconduct. Smith sued for damages under § 1983 after the murder charges against him were dismissed. The

defendants moved to dismiss his complaint on stature-of-limitations grounds, arguing that Smith's claim was time-barred because it accrued when his conviction was reversed by the state's highest court, even though Smith was still at the time of the reversal, subject to ongoing criminal prosecution Akers similarly asserts in the instant action that the two reversals and remand by the Kentucky Court of Appeals triggered his malicious prosecution claim against the defendants.

The Third Circuit concluded that Smith's § 1983 complaint was timely because it was filed within the requisite 2 years from the date the criminal charges against him were dismissed. The...

-17-

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...Third Circuit ruled that the dismissal of the charges, not the earlier reversal and remand on direct appeal, commenced the running of the limitations period. The court reasoned that the reversal and remand of Smith's conviction created a potential for a judgement against Smith in the pending criminal prosecution, which potential would have precluded Smith's bringing a § 1983 claim against the defendants under the Heck v. Humphrey doctrine. The Third Circuit stated:

> ...[w]e must decide whether , under the teaching of *Heck[v. Humphrey]* a claim is cognizable under § 1983 where its success would necessarily imply the validity of a *future conviction that might be entered on a pending criminal charge.* We hold that such a claim is not cognizable under § 1983....
>
> ....
>
> ...[s]uch a claim does not accrue so long *as the potential for a judgement in a criminal prosecution continues to exist.*

Smith v. Holtz, 87. F 3d at 110, 113 (Emphasis added). The third Circuit ruled that the potential for Smith's conviction was not extinguished until the criminal charges against him were finally dismissed.

Applying the Smith v. Holtz rationale to the instant proceeding, the 1998 reversal and remand by the Kentucky Court of Appeals created the potential of a judgement against Akers on both charges because both charges were remanded for retrial, which created the prospect or possibility of Akers being convicted, on retrial, of either or both charges. In fact, on retrial, Akers was convicted again on both charges; the stalking charge was affirmed by the Kentucky Court of Appeals in May, 2000, and the assault charge was again remanded for retrial. Akers pled guilty to assault under emotional disturbance in July, 2000. Thus, after each reversal and remand, the potential for Akers' conviction ( on both charges) became reality. Pursuant to Heck v. Humphrey and Smith v. Holtz, Akers could not have maintained a § 1983 action against any of the named defendants immediately after the Kentucky Court of Appeals reveresed and remanded, in either 1998 or 2000, ...

-18-

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...because of the existence of the potential of his conviction on retrial in the pending criminal prosecutions. Akers has since been convicted of stalking and has since pled guilty to assault under extreme emotional disturbance. Consequently, all of his civil rights claims against these defendants are now completely barred by the Heck v. Humphrey doctrine.

This court finds persuasive the following authorities discussing the requirement of a final disposition and/or termination of underlying criminal charges with regard to the initiation of a malicious prosecution claim under § 1983: Ruff v. Runyon, , 258 F. 3d 389 (6th Cir. 2001) (Bivens claim for malicious prosecution did not accrue until criminal charges were dismissed); Shamaeizadeh v. Cunigan, 182 F. 3d391(6th Cir 1999)(same); Harvey v. Waldron, 210 F.3d 1008 (9th Cir. 2000) (stating that Heck applies to both actual and potential conviction in the context of accrual of action); Covington v. City of New York, 171 F.3d 117, 124 (2d Cir. 1999) (§ 1985 claim would not accrue for statute of limitations purposes until criminal charge

was actually dismissed); Uboh v. Reno, 141 F3d 1000 (11th Cir. 1998) (holding the Bivens claim accrued after dismissal of criminal charges); Burt v. Smith, 181 N.Y. 1,5 (N.Y. 1905) (favorable terminations is a prosecution that :finally ends in failure").

III.

EFFECT OF JULY, 2000 GUILTY PLEA ON "FAVORABLE TERMINATION" REQUIRMENT

Akers attributes his July 7, 2000 guilty plea to the fear of being tried a third time by Red Corn in Overstreet's court. Akers' guilty plea, however, prevents him form collaterally attacking same in a subsequent civil suit.[10] In Duerr v. Kentucky & Indiana Bridge & R. Co., Ky., 116 S.W. ...

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[10] Akers submitted as Exhibit "EEEE" in Volume II of his Appendix [page 634] a copy of the "Judgement on the Guilty Plea," which was entered of record in the Fayette Circuit Court on July 10, 2000. Notwithstanding his assertion that this plea was coerced, this court document clearly confirms Akers' plea to "Assault under Extreme Emotional Disturbance" was knowing and voluntary. The judgement states as follows:



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325 (1909), Duerr filed an action for malicious prosecution against the complaining witness after Duerr had pled guilty to a reduced felony charge. Much like akers, Duerr alleged: (1) that the complaining witness gave perjured testimony against him; (2) that there was a conspiracy among a group of individual to deprive him of his liberty; and (3) that the only way to avoid a felony charge was to plead to a lesser offense under duress and intimidation. In dismissing his malicious prosecution claim, the highest court in Kentucky opined as follows:

> But the appellant completely closed the door of the courts to his petition for redress when he admitted that he had pleaded guilty to a charge that was made unjustly, as he avers, against him. A person who comes into open court and admits on the record that he is guilty of the offense for which he is being prosecuted will not afterwards be heard to say that the prosecution against him was procured by fraudulent methods. He will not be allowed to admit in one court that he was guilty, and in another to plead his innocence. His public admission of guilt in the criminal court was a complete and unanswerable refutation of the charge that the prosecution against him was unfounded.

Duerr at 326. See also Pennington v. Dollar Tree Stores, 28 Fed. Appx. 482, 2002 WL 169547 (6th Cir. (Ky)) (arrestee's stipulation that there was probable cause for her arrest and shoplifting charge was not a termination of proceeding in her favor, as required to support her malicious prosecution claim against store and security firm). In the instant case, Akers stipulated and agreed that there was probable cause for the charge to be prosecuted.

"Normally a conviction alone is sufficient to establish probable cause of a prosecution." Dunn v. Tennessee, 697 F.2d at 127. akers stands convicted of two felonies, to one of which he entered a plea of guilty. See also Hendrix v. Cox & Associates, 1997 WL 710914, *4 (Tenn. CT. app.) ("In and of itself, a reversal by this Court is insufficient to overcome the presumption [of...

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The court, finding that the Defendant understand the nature of the charges against him, that the Defendant understands the elements of the charges against him and the elements of an lesser included offenses and any defenses available to him at trial, that the Defendant's plea is voluntary, and that the Defendant knowingly and voluntarily waives his right of confrontation, and that there is a factual basis for the Defendant's plea....

probable cause]; otherwise, every decision reversed by this Court could form the basis for a malicious prosecution claim"). In Singleton, *supra*, the Second Circuit Court of Appeals held that a prosecution resulting in only a hungjury-not even a conviction-precluded the plaintiff's claim of malicious prosecution under § 1983. This court finds persuasive the following analysis in Singleton:

> Without proof that the criminal prosecution based on probable cause was terminated in the defendant's favor, no federal claim exists. To hold otherwise would permit a defendant to relitigate the issue of probable cause by way of a § 1983 action, despite the state court's determination of that issue against him after full and fair consideration of the evidence, thus posing the prospect of harassment, waste and endless litigation, contrary to principles of federalism.

Id. at 194

Akers' two criminal convictions for assault and stalking are unfavorable, final terminations of the criminal charges. They have not been reversed and they remain valid, outstanding, and dispositive of Akers criminal guilt on both charges. Thus, Akers is precluded from asserting claims under § 1983, § 1985 and RICO. This conclusion is consistent with the holding and language of Heck v. Humphrey.

> §1983 actions are subject to the 'hoary rpinciple' that civil tort actions are not the appropriate vehicle for challenging the validity of convictions and sentences. The express objective of this holding were to prevent 'a collateral attack on [a] conviction through the vehicle of a civil suit.'

Id. at 1144S. Ct at 2371

Accordingly, Akers claims of deprivations of constitutional rights premised on §§ 1983, 1985 and RICO statutes are dismissed.

-21-

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IV.

DISMISSAL UNDER THE *ROOKER-FELDMAN* DOCTRINE

Several of the defendants have also raised the Rooker-Feldman doctrine as a bar to Akers claims. This doctrine, "a combination of the abstentions and *res judicata* doctrine, stands for the proposition that a federal district court may not hear an appeal of a case already litigated in stat court. A party raising a federal question must appeal a state court decision through the state system and then directly to the Supreme Court of the United States." United States v. Owens, 54 f. 3d271, 274 (6th Cir 1995) (citing District fo Columbia Court of Appeals v Feldman, 460 U.S. 462, 476 (1983); Rooker v. Feldman Trust Co., 263 U.S. 413 (1923). Only the United States Supreme Court has jurisdiction to correct state court judgements. Feldman, 460 U.S. at 482.

This principle is equally true in constitutional cases brought under § 1983, "since federal courts must give 'full faith and credit' to the judicial proceedings of state courts." Gottfried v Medical Planning Services, Inc. 142 F.ed 326,330 (6th Cir.)., cert. denied, 525 U.S. 1041 (1998), citing Migra v. Warren City Sch. Dist. Bd. of Educ., 465 U.S. 75, 85 (1984).

In Rowe v. Bank One , Indianapolis NA, 230F.3d 1359, 2000 WL 1477231 96th Cir. Sept. 25, 2000)(Table, unpublished), the Sixth Circuit upheld the dismissal of a § 1983 action brought by a plaintiff claiming that a bank had improperly foreclosed and evicted him from his property in 1988, in violation of Michigan law and his due process and equal protection rights. The court held that Rowe's § 1983 action was precluded by *res judicata* because (1) the state court ruled in favor of the defendant on the merits of the defendant's foreclosure and eviction action; (2) the allegations Rowe raised in the "illicit"

foreclosure action, i.e. perjury and falsification of records, were either raised or could have been raised in the prior state court actions; and (3) Rowe's § 1983 federal complaint involved the same parties or their privies. Additionally, the Sixth Circuit concluded that...

-22-

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...the Rooker-Feldman doctrine precluded Rowe's § 1983 claims because they could be-or are- described as "the functional equivalent of an appeal from the state court judgments in favor of the defendant." Rowe v. Bank One at **1.

The Rooker-Feldman doctrine-clearly dictates that this court lacks subject matter jurisdiction to entertain Akers'§ 1983 and § 1985 claims, as well as the RICO claims, because they are a collateral attack on his two state court convictions. Akers cannot invoke federal jurisdication by couching his claims in terms of a civil rights action. See Ritter v. Ross, 992 F 2d 750,754 (7th Cir. 1993, cert, denied, 510 U.S. 1046 (1994). Akers' demand for damages in inextricably interwined with the state court's two judgements of conviction, and this court therefore lascks jurisdiction to review that decision under the Rooker-Feldman doctrine.

V.

ALTERNATIVE GROUNDS FOR DISMISSAL

Even if Akers complaint were not barred by Heck v. Humphrey and the Rooker-Feldman doctrine, the complaint suffers from other deficiencies, which the court will now address.

1. Preclusive Effect of 1999 Civil Rights Order

The 1999 Civil Rights Order dismissed Akers claims against five defendarts he names in the instant case: Bishop, Overstreet, Swartz, Red Corn and Clark. The 1999 civil rights action stemmed from essentially the same set of facts and occurrences (through and including May 10, 199) which form the basis of the instant complaint. As discussed, the instant complaint does contain some, but not many, facts alleged to

have occurred subsequent to May 10, 1999. While Akers has not proceeded in the instant case in *forma pauperis (IFP)*, case law governing IFP proceedings (which usually also involve *pro se* plaintiffs) is persuasive. Courts may appropriately dismiss IFP actions as frivolous when the action "seek[s] to relitigate claims which allege...



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...substantially the same facts arising from a common series of events which have already been unsuccessfully litigated by the IFP plaintiff." Wilson v. Lynaugh, 878 F. 2d 846, 850 (5th Cir. 1989); see also Curtis v. Boggs. 2001 WL 649735 (N.D. Tex.), Robertson v. Burger King Corp. 1994 WL 424431 (E.D. La.).

Under Wilson, this court deems it appropriate to dismiss the instant action against Bishop, Overstreet, Swartz, Red Corn and Clark as frivolous. The present claims against these defendants are essentially repetitive of the claims Akers asserted in the 1999 civil rights action. Akers alleges "substantially the same facts that arise from the commons series of events that were unsuccessfully litigated by Plaintiff in [199]." Curtis v. Boggs at **2. Thus, dismissal of Akers complaint against these defendants is appropriate on these grounds.

2. 42 U.S.C. § 1985 (2)

Akers' complaint fails to state a claim against the named defendants he alleges violated 42 U.S.C. § 1985(2). In order to state a claim under § 1985(2), a plaintiff must show either: (1) the existence of a conspiracy to use threat, force or intimidation of a witness or party to obstruct justice in any court of the United States, Dooley v. Reis, *supra*, or (2) class-based invidious discriminations with respect to a state court proceeding, Usher v. City of Los Angeles, *supra*.

With regard to the first prong of § 1985(2), Akers complaint states no claim because his complaint alleges no proceeding pending in any federal court, which involved a conspiracy to deter, by force, intimidation or threat, any party or witness, or which involved tampering with a juror. [11] Thus, the first prong of § 1985(2) is unavailable as a jurisdictional basis.

Was v. Young, 795 F. supp. 1041, 1053 (E.D. Mich. 1992. ) with respect to the second prong of § of 1985(2), a plaintiff must...

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[11] All of the facts of which Akers complained occurred in the Commonwealth of Kentucky Fayette Circuit and District Courts.



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...alleged the existence of "some racial, or perhaps otherwise class based, invidiously discriminatory animus behind the conspirators' action." Kush v. Rutledge, 460 U.S. 719, 726 (1983); Bennett v. Batchik, 1991 WL 110385 (6th Cir. June 24, 1991). The second prong of § 1985(2) focuses on the deprivation of equal protection of the laws with respect to state court judicial proceeding and thus the courts have required a plaintiff to demonstrate his or a class of person' denial of equal protection of the law.

Akers has not stated a denial of equal protection of the law; at best, his complaint alleges he did not receive due process of the law at the hands of Overstreet and Red Corn during his two trials.[12] Akers does not allege a racial or class-based invidious discrimination behind any of the defendants' actions, as require by Kush v. Rutledge, *supra*. Akers asserts a theory that because he, a man, was prosecuted for domestic violence offenses, he was in some sort of protected class of person. This assertion does not rise to the level of establishing that Akers was denied the equal protection of any law as a result of a racial or otherwise class-based invidiously discriminatory animus. Akers has not alleged that his race, or any other classification that might apply t him, has been the object of a "class-based invidiously discrimination animus," as defined in Kush v. Rutledge, *supra*; Phillips v. Intl. Ass'n. of Bridge, Structural and Ornamental Iron Workers, 556 F2d 939, 941 (9th Cir. 1977). Akers has failed to argue that any defendants conspired to deprive him of equal protection of the law by acting with discriminatory intent. Even if § 1985(2) applied to the situation, Akers has failed to make a sufficient allegations of conspiracy to

support such an action.

The facts, as alleged by Akers, are that his former spouse initiated and EPO against him as a result of a physical confrontation with him and that his continued efforts to violate the EPO resulted...

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[12] 42 U.S.C. § 1985(3) does not apply where the defendants are alleged to have conspired to deprive a victim of due process of law; it applies to alleged deprivation of equal protection of the law. Lewis v. Brautigam, 227 F. 2d 124 (5th Cir. 1955).



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...in stalking charges and a subsequent indictment in Fayette Circuit Court. A jury trial ensued where the judge presided, a prosecutor prosecuted, and witnesses testified against him; a verdict was rendered from which he appealed and a retrial occurred thereafter. Akers' allegations that these events, which occurred in the normal process of a criminal prosecution, constituted a conspiracy simply have no merit. Leon v. Federal Reserve Bank of Chicago, 823 F.2d 928, 930 (6th Cir. 1987); Pillette v. Detroit Police Dept., 661 F. Supp. 1145, 1148 (E.D. Mich. 1987); Porter v. Bainbridge, 405 F. Supp. 83, 91 (D. Ind. 1975) (holding that an allegations of individual acts of several defendants taken collectively to allegedly violate rights does not support an action under § 1985(2));Moss v. Perkins, 682 F. Supp. 395, 396 (N.D. III 1988)(concluding that, in the absence of specific evidence of conspiratorial agreement, the fact that defendants are associated in some manner cannot be used to prove existence of a conspiracy). Akers' section 1985(2) claim must be dismissed.

3. 42 U.S.C. §1985(3)

42 U.S.C. § 1985(3) pertains to a conspiracy to interfere with civil rights, specifically the conspiracy to deprive a person or a class of persons equal protection of the law. In order to bring a 42 U.S.C. § 1985(3) claim, a plaintiff must demonstrate: (1) a conspiracy; (2) that the conspiracy is for the purpose of

depriving, either directly or indirectly, any person or class of persons of equal protections of the laws, or of equal privileges and immunities under the laws; (3) and act in furtherance of the conspiracy; and (4) injury to either person or property, or deprivation of any right or privilege of the United State citizen. Volunteer Medical Clinic, Inc. v. Operation Rescue, 948 F 2d 218, 223 (6th Cir. 1991) (citing United Dhd of Carpenters & Joiners v. Scott, 463 U.S. 825 (1983); Conklin v. Lovely, 834 F2d 543,548 (6th Cir. 1987). A fifth requirement was established by the Supreme Court in Griffin v. Breckenridge, 403 U.S. 88, 102 (1971), which also requires that: (5) the conspiratorial conduct of which the plaintiff complains must be propelled by "some racial, or perhaps...

-26-

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...otherwise class-base, invidiously discriminatory animus." Aulson v. Blanchard, 83 F.3d 1,2 (1st Cir. 1996) (citing Id.). Akers has no actionable claim under § 1985(3), because he has not alleged facts demonstrating that the defendants' conduct was motivated by racial or class-based discriminatory animus. Azar v. Conley, 456 F 2d 1382, 1386 (6th Cir. 1972).

Section 1985(3) covers only conspiracies against: (1) classes who receive heightened protection under the Equal Protection Clause; and (2) "those individuals who join together as a class for the purpose of asserting certain fundamental rights." Bartell v. Lohiser, 215 F 3d 550, 559 (6th Cir. 2000), citing Browder v. Tipton, 630 f 2d 1149, 1150 (6th Cir. 1980). See also Haverstick Enterprises, Inc., v. Financial Federal Credit, Inc., 32 F.3d 989, 994 (6th Cir. 1994). Thus, in Bartell, not even alleged discrimination on the basis of a mental disability was actionable under § 1985(3) as " the Supreme Court has not conferred suspect or quasi-suspect status on statutory classifications concerning the disabled." Bartell, 215 F.3d at 560.

Akers alleges no facts even remotely suggesting he is a member of any class receiving heightened protection under the Equal Protection Clause. Akers has not alleged that any defendants harbored any class-based animus toward any class

of which Akers is a member, in the class's attempt to assert a fundamental right. At most, Akers complains generally about domestic violence laws that were validly enacted in 1993, alleging that the real purpose of domestic violence to divest men, in general, of their property. Akers has failed to allege facts which reveal "class-based invidious discriminatory animus" or intent on the part of the alleged conspirators. Accordingly, Akers' claims asserted under 42 U.S.C. & 1985(3) are dismissed.

4. RICO Claims

Akers has alleged violations of the Racketeer Influenced and Corrupt Organization ("RICO") Act codified at 18 U.S.C. § 1962. A civil RICO remedy is created in 18 U.S.C. § 1964(c) for "[a]ny...

-27-

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...person injured in his business or property by reason of a violation of section 1962 of this chapter. A violation of RICO under § 1962(c) requires: (1) conduct, (2) on an enterprise, (3) through a pattern (4) of racketeering activity. Sedima. S.P.R.L. v. Imirex Co., 473 U.S. 479 (1985). See also Kentry v. Bank One of Columbus NA. 92 F. 3d 384 (6th Cir. 1996). In order to establish "racketeering activity," the plaintiff must allege a predicate act. It is unlawful "for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt." 42 U.S.C. § 1962(c).

The definition of "enterprise" includes "any individual, partnership, corporation, association or other legal entity, and any union or group of individual associated in fact although not a legal entity." 18 U.S.C.§ 1961 (4). Two elements are necessary to establish an "enterprise" under RICO, 18 U.S.C.A.§ § 1961(4), 1962(b),(c): First, there must be evidence of ongoing organization, formal or informal, and evidence that various

associates function as a continuing unit; and second, the enterprise must have an existence separate and apart from the pattern of activity in which it engaged. Medallion TV Enterprised, Inc. v. Selec TV of California, Inc. 627 F. Supp. 1290 (C.D. Cal. 1986) aff'd 833 F.2d 1360, cert. denied, 492 U.S. 917).

Akers' allegation based on violations of the civil RICO statue, § 1964(c), fails to state a claim on which relief can be granted. Domestic relations disputes do not constitute a basis for the invocation of RICO remedies. McMurtry v. Brasfield, 654 F. Supp. 1222 (E.D. Va. 1987). McMurtyr involved an attempt by a father unhappy about his former spouse's removal of their son to Texas. Like Akers, McMurtry brought a RICO civil suit against the mother, the mother's father, and the mother's law firm, alleging mail fraud as a predicate act of RICO conspiracy. The Eastern District of Virginia concluded that the plaintiff had failed: (1) to adequately demonstrate injury to...



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...business or property as his injuries were personal in nature; (2) to establish racketeering activity based on mail fraud involving correspondence between attorneys, concluding that such a finding would chill an attorney's effort and duties to represent a client during pending litigation; (3) to establish a pattern of racketeering, finding that the "alleged scheme" had only one purpose (to get the boy to Texas); no other parties were defrauded by the acts beyond the one "scheme"; and (4) to establish the elements of RICO enterprise with respect to the defendant law firm, finding that "enterprise" was meant to refer to a being "different from, not the same as . . . the person whose behavior the RICO act was designed to prohibit." Id. at 1226, citing United States v. Computer Sciences Corp., 689 F.2d 1181 (4th Cir. 1982), cert. denied, 459 U.S. 1105 (1983).

Similarly, this court can discern no pattern of racketeering affecting interstate commerce, nor can it find the existence of a relationship affecting anyone other than Akers. Thus, akers' allegations must be dismissed for failure to state a claim on which relief can be based.

5. Judicial Immunity

Akers seeks damages against Defendants Clark, Overstreet, and Goodwine for acts they performed in their judicial capacities. These defendants assert the defense of judicial immunity, which bars any recovery by Akers against them. A plaintiff may recover damages against a judge only when he or she has acted in "clear absence of all jurisdiction." Stump v. Sparkman, 435 U.s. 349, 356-57 (1978), quoting Bradley v. Fisher, 13 Wall, 335, 351, 20L.Ed. 464 (1871). Immunity extends to complaints arising out of judicial conduct in criminal as well as civil suits. Pierson v. Ray, 386 U.S. 547 (1967). Furthermore, the common law immunity of judges applies to suits under 42 U.S.C. § 1983, alleging deprivations of constitutional rights. Pierson v. Ray, *supra*.

Defendants Clark, Overstreet and Goodwine were all acting within their applicable jurisdiction when they presided over their respective proceeding involving Akers between 1994 and...



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...2000. Akers alleges that Overstreet, in particular, ruled against him on all motions pertaining to his criminal felony charges and on related matters such as bail. He complains that her failure to follow the Court of Appeals' 1998 opinion reversing and remanding was malicious and fraudulent, causing him to be unlawfully imprisoned and to lose money in his business. In its May, 2000 Opinion, the Kentucky Court of Appeals commented on Overstreet's failure to follow its prior 1998 instructions on separate trials and evidentiary matters. Nonetheless, her conduct is protected by judicial immunity and is not actionable under § § 1983, 1985, or RICO. The Supreme Court has specifically held that even the commission of grave procedural errors, including those involving due process, do not constitute action taken in the clear absence of all jurisdiction. Stump, 435 U.S. at 359. See Sevier v. Turner, 742 F2d. 262 (6th Cir. 1984), in which the Sixth Circuit held that judge's failure to inform the plaintiff of his constitutional rights, though a grave procedural error, did not subject him to damages.

Akers alleges that Overstreet acted maliciously toward him throughout the pendency of his felony proceeding over which she presided. Judicial action, even if sone maliciously, or even if it was in excess of his or her authority, will not subject a judge to liability. Stump at 485 U.S. 356-357. See also Mireles v. Waco, 502 u.s. 9, 11-12 (1991) (per curiam) (immunity is available even if a judge acts erroneously, corruptly, or in excess of his jurisdiction), and Mitchell v. McBryde, 944 F. 2d 229, 230 (5th Cir. 1991) (fact that judge was alleged to have acted in a conspiracy and committed grave procedural errors was insufficient to avoid absolute judicial immunity). Akers' complaint alleges nothing that amounts to these judges' acting outside their roles as judges or performing non-judicial acts. He alleges, at most, that he did not agree with their decisions; that they were wrong; and that as a result of those decision, he was adversely affected. While Akers continually describes the Judges' conduct as "fraudulent," he alleges no facts establishing that they in fact committed any...

-30-

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"fraud" against him. They simply rendered rulings adverse to Akers' interest. A judge's rulings on motions, even if they are detrimental to a litigant's case, constitute judicial actions and are thus protected by judicial immunity. Stump, 485 U.S. at 363 (disagreement with action taken by judge does not deprive him of judicial immunity). See also Clark v. Taylor, 627 F.2d 284 (D.C.Cir. 1980). Thus, absolute judicial immunity bars Akers' claims against all of the defendant judges.

6. Prosecutorial Immunity and Quasi-Judicial Immunity

Like the judges, the prosecutors, Lou Anna Red Corn, Cindy G. Swartz, and Todd D. Ferguson, enjoy prosecutorial immunity because they acted within the scope of their duties in initiating and pursuing a criminal prosecution and in presenting the Commonwealth of Kentucky's case at trial and on appeal. Imbler v. Patchman, 424 U.S. 409 (1976). See also Grant v. Hollenbach, 870 F 2d. 1135 (6th Cir. 1989) (prosecutors were

absolutely immune from the claim they conspired to knowingly bring false charges despite claims of failure to investigate facts and alleged commission of perjury before the grand jury). Therefore, akers has no claim against Defendants Red Corn, Swartz and Ferguson.

With respect to Defendants Witt, the Fayette County Sheriff's Office, the Commonwealth Attorney's office, and the Fayette Circuit Clerk's Office, Akers has not articulated any facts substantiating that they violated his constitutional rights; but even if he had so stated, these defendants enjoy a quasi-judicial immunity pursuant to Bush v. Rauch, 38 F 3d 842 (6th Cir. 1994). Quasi-judicial immunity extends to non-judicial officers acting as arms of the court, who are "performing tasks so integral or intertwined with the judicial process that these persons are considered as arms of the judicial officer which is immune." Id. At 847, citing Scruggs v. Moellering, 870 F2d376 97th Cir.), cert. denied, 493 U.S. 956 (1989). This court finds that these defendants were performing tasks integral to the judicial process concerning their limited involvement with Akers



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At a minimum, these defendants are entitled to assert qualified immunity as a defense to Akers' claims. Akers has failed to articulate what, if any, "clearly established right of which a reasonable person would have known" these particular defendants violated. Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). A clearly established right must be determined by a district court finding binding precedent of the Supreme Court, its courts of appeals, or itself. Ohio Civil Serv. Employees Assoc. v. Seiter, 858 F2d 1171 (6th Cir. 1988). The court finds that these defendants have qualified immunity. Russo v. City of Cincinnati, 953 F. 2d 1036 (6th Cir. 1992).

7. Witness Immunity

Defendants Layne, Shannon, Vaughn, Rushing, Fleming, and Bishop, as witnesses in judicial proceeding against Akers, are immune from civil liability under 42 U.S.C. § 1983, even if

they knowingly gave perjured testimony. Briscoe v. Lahue 460 U.S. 325, 103 S. Ct 1008 (1983). See also Macko v. Bryron, 760 F.2d 95 (6th Cir. 1985). Thus, Akers allegations that these witnesses/defendants allegedly gave false testimony during his two trial do not form the basis for a viable claim against these defendants.

8. 42 U.S.C. § 1983

Akers has alleged that Defendants Layne, Shannon, Vaughn, Fleming, Rushing, Kelly, Williams, and Bishop have all violated § 1983, which is a federal civil rights statute. To establish a right to relief under § 1983, the plaintiff must plead and prove two essential elements. He must show, first, that he has been deprived of right secured by the Constitution or laws of the United States, and, second, that the defendants allegedly depriving him of those right acted under color of state law. Parratt v. Taylor, 451 U.S. 527, 535 91981); O'Brien v. City of Grand Rapids, 23F.3d 990 (6th Cir. 1994).



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A plaintiff cannot assert a § 1983 claim against an individual who did not act under color of state law. Lugar v. Edmondson Oil Co., 457 U.S. 922, 102 S. Ct. 2744 (1982), and Kelm v. Hyatt, 44 F.3d 415 (6th Cir. 1955). Akers has not alleged that these defendants acted under color of state law in allegedly depriving him of his constitutional rights. Carolyn Bishop's utilization of the Fayette District Court's domestic violence protection procedures does not convert her into a state color. Kelm at 421 (wife's utilization of a state statute did not cause her to be a "state actor"). See also Nowicki v. Bruff, 103 F3d, 130, 1996 WL 694141 (6th Cir. Dec. 3, 1996) (dismissal of plaintiffs § 1983 claims against his ex-wife and her two attorneys, arising out of a domestic relations case, was proper as they did not act under color of state law).

Akers' allegations that the testimony of Vaughn, Layne, Shannon, Fleming, Bishop and Rushing against him at trial and Bishop's testimony against him before the grand jury violated

his rights under federal law fail, because § 1983 does not allow for recovery of damages against a private party for testimony in a judicial proceeding. Briscoe v. Lahue,*supra*, 103 S. Ct. at 1112-13 ("It is beyond question that when a private party gives testimony in open court in a criminal tril, that act is not performed 'under color of law'."). See also Miller v. Glanz, 948 F. 2d1562 (10th Cir 1991) (plaintiff's § 1983 claims against prosecution witnesses who procured plaintiff's battery convictions were properly dismissed, as was plaintiffs complaint that the same defendants conspired to violate plaintiff's civil right by giving false testimony). Accord, Alioto v. City of Shively, Kentucky, 835 F.2d 1173, 1174 (6th Cir. 1987) (Briscoe immunity extended to alleged conspirators to commit perjury).

This court, therefore, dismisses Akers' complaint in its entirety on the basis that it fails to state a claim against any of the named defendants. Fed.R.Civ.P. 12(b)(1).

-33-

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DISMISSAL OF STATE CLAIMS

The federal claims against all of the named defendants will be dismissed in this actions; therefore, Akers' pendent state claims, asserted under Tennessee law, should be dismissed as well. United Mine workers of America v. Gibbs, 383 U.S. 715, 726 (1966). When a plaintiff has no federal cause of action, a district court may exercise its discretion to dismiss his pendent state law claims. Gregory v. Hunt, et. al., 24 F. 3d 781 (6th cir. 1994). With regard to the construed state law tort claim of malicious prosecution, since the plaintiff has no federal claim, the court declines supplemental jurisdiction to consider the state claim. See 28 U.S.C. § 13679(c)(3) (district court may decline to exercise supplemental jurisdiction if the court has dismissed all claims over which the court has original jurisdiction). Akers' state tort claim of malicious prosecution is dismissed.

Accordingly, this court being advised, IT IS ORDERED that this action (02-CV-162-JBC) is DISMISSED WITH PREJUDICE and judgement shall be entered contemporaneously with this Memorandum Opinion and Order in favor of the

named defendants herein.

This the 25th day of September, 2002.

s/Jennifer B. Coffman
JENNIFER B. COFFMAN, JUDGE

Date of Entry and Service:



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FEB 21 2002
LEONARD GREEN, CLERK

Case No: 01-6243
UNTIED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

ORDER

JAMES G. AKERS
Plaintiff - Appellant

v.

CAROLYN P. BISHOP, et al
Defendants - Appellees

BEFORE: KENNEDY and DAUGHTREY, Circuit Judges; Bell, Chief District Judge*

Upon consideration of the motion previously filed by the appellant to stay the mandate,

It is ORDERED that the motion be and it hereby is DENIED.

ENTERED BY ORDER OF THE COURT

"s" / Leonard Green, Clerk

* The Honorable Robert Holmes Bell, Chief United States District Judge for the Western District of Michigan, sitting by designation.

FILED
JAN 24 2002
Leonard Green, Clerk

No. 01-6243

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JAMES G. AKERS, )
)
Plaintiff-Appellant )
v. ) **ORDER**
)
)
CAROLYN P. BISHOP, et, al )
)
Defendants-Appellees)

Not Recommended For Full-Text Publication.
Sixth Circuit Rule 28(g) Limits citation to specific situation. Please see rule 28(g) before citing in a Proceeding in a court in the Sixth Circuit limited, a copy must be served on other parties and the court.. This notice is to be prominently displayed if this decision is reproduced.

Before: KENNEDY and DAUGHTRY, Circuit Judges; BELL, Chief District Judge.*

This matter is before the court upon consideration of motions of the appellees to dismiss the appeal on the basis that the order transferring the case to a different district court is not a final or appealable order. The appellant responded arguing that the order is appealable under the collateral-order doctrine. *See Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S., 541, 546-47 (1949). The appellant also filed a motion seeking reconsideration of the clerk's letter holding the briefing schedule in abeyance pending a ruling on the motions to dismiss.

A review of the documents before the court indicates that the appellant filed a civil complaint in the United States District

Court for the Middle District of Tennessee. The court transferred the case to the United States District for the Eastern District of Kentucky. Appellant appealed the order transferring the case.

This court lacks jurisdiction over this appeal. The order transferring the case is not appealable. *See SongBryd, Inc. v. Estate of Grossman*, 206 F.3d 172, 176(2d Cir), *cert. denied* 531 U.S. 824 (2000); *Lemon v. Druffel*, 253 F.2d 680, 683 (6th Cir. 1958). A ruling on a motion to...

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*The Honorable Robert Holmes Bell, Chief United States District Judge for the Western District of Michigan, sitting by designation.

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...transfer is not appealable under the collateral order exception. *FDIC v. McGlamery*, 74, F.3d 218, 222(10th Cir. 1996); *Middlebrooks v. Smith*, 735 F.2d 431,432(11th Cir. 1984).

It is ordered that the appeal be dismissed. The motion for reconsideration is denied as moot.

ENTERED BY ORDER OF THE COURT

s/ Leonard Green, Jr.
**Clerk**

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

| | | |
|---|---|---|
| JAMES G. AKERS,<br>Plaintiff | ) | |
| v. | ) | No. #:00-1142 |
| | ) | JUDGE ECHOLS |
| CAROLYN P. BISHOP, DORIS FLEMING, ALLEN I. RUSHING, TODD M. LAYNE, DONALD SHANNON, JERRY L. KELLY, JOHN J. VAUGHN, THOMAS D. CLARK, KATHERINE WITT, PAMELA MILLER, LOU A. RED CORN, REBECCA M. OVERSTREET, CINDY G. SWARTZ, ERNEST W. WILLIAMS, TODD D. FERGUSON, PAMELA D. GOODWINE, and various JOHN and JANE DOES,<br>Defendants. | ) | |

**ORDER**

Presently pending before the Court are Motions to dismiss by Defendants Bishop, Williams, and Rushing (Docket Entry Nos. 55, 71 & 73) and Motions to Dismiss or Transfer by all other Defendants (Docket Entry Nos. 31, 34, 37, 38, 42, 51, & 76). Plaintiff has filed several documents in opposition.

For the reasons explained in the Memorandum entered contemporaneously herewith, Defendants' Motions to Transfer are hereby GRANTED, and this case is hereby TRANSFERRED to the United States District Court for the Eastern District of Kentucky.

Defendants' Motions to Dismiss are hereby DENIED AS MOOT.

It is so ORDERED.

s/ Robert L. Echols
ROBERT L. ECHOLS
UNITED STATES DISTRICT JUDGE

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This document was entered on
the docket in compliance with
Rule 58 and/or Rule 70(a).

FRCP on 9-18-01 by jr

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JAMES G. AKERS,
Plaintiff
v.

CAROLYN P. BISHOP, DORIS FLEMING, ALLEN I. RUSHING, TODD M. LAYNE, DONALD SHANNON, JERRY L. KELLY, JOHN J. VAUGHN, THOMAS D. CLARK, KATHERINE WITT, PAMELA MILLER, LOU A. RED CORN, REBECCA M. OVERSTREET, CINDY G. SWARTZ, ERNEST W. WILLIAMS, TODD D. FERGUSON, PAMELA D. GOODWINE, and various JOHN and JANE DOES,
Defendants.

No. #:00-1142
JUDGE ECHOLS

**MEMORANDUM**

Presently pending before the Court are Motions to dismiss by Defendants Bishop, Williams, Rushing (Docket Entry Nos. 55, 71 & 73) and Motions to Dismiss or Transfer by all other Defendants (Docket Entry Nos. 31, 34, 37, 38, 42, 51, & 76). Plaintiff has filed several documents in opposition.

For the reasons explained herein, Defendants' Motions to Transfer will be GRANTED, and this case will be TRANSFERRED to the United States District Court for the Eastern District of Kentucky. Defendants' Motions to Dismiss will be DENIED AS MOOT.

Plaintiff, who proceeds pro se, has filed a 134-page Complaint (Docket Entry No. 1) against sixteen individuals and numerous unnamed defendants. He alleges claims for violations of his...

This document was entered on
the docket in compliance with
Rule 58 and/or Rule 70(a).

FRCP on 9-18-01 by jr

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...constitutional rights under 42 U.S.C. § 1983 (1994 & Supp. IV), conspiracy to violate his constitutional rights under 42 U.S.C. § 1985 (1994), and violations of the Racketeer and Influenced Corrupt Organizations Act (RICO), 18 U.S.C. § 1961-68 (1964 & Supp. IV). Because the claims are based on federal law, this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (1994).

This lawsuit arises from Plaintiff's criminal convictions for stalking and assaulting Defendant Carolyn Bishop, his former wife. The defendants include judges, prosecutors, and witnesses involved in the criminal proceeding which took place in state courts in Kentucky. Plaintiff alleges in the instant suit that his Kentucky state court convictions resulted from an unlawful conspiracy between the Defendants.

Defendants now move to dismiss for lack of jurisdiction pursuant to Rule 12(b) (2), for lack of venue pursuant to Rule 12(b) (3), and for failure to state a claim upon which relief can be granted pursuant to Rule 12(b) (6) of the Federal Rules of Civil Procedure. All Defendants except Bishop, Williams, and Rushing seek, in the alternative, to have the case transferred pursuant to either 28 U.S.C. § 1404(a) (1994) or 28 U.S.C. § 1406(a) to the united States District Court for the Eastern District of Kentucky.

The applicable venue statue states,

> A civil action wherein jurisdiction is not founded solely on diversity of citizenship may, except as otherwise provided by law, be brought only in . . . a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred . . . .

28 U.S.C. § 1391(b) (2) (1994).

The Court has reviewed Plaintiff's lengthy Complaint, and the only events alleged to have occurred in this District are some telephone calls to and from his former wife, Defendant Carolyn Bishop, in Lexington, Kentucky, which may have violated a protective order and formed the basis for contempt charges, and his extradition in October 1995 from Tennessee in Kentucky after his arrest. All other events alleged in the Complaint occurred in the Eastern District of Kentucky, including his divorce, the events that led to his arrests, his trial in state court, sentence, and the location of his incarceration. Therefore, based upon the record before the court, the Court concludes that "a substantial part of the events or omissions giving rise to the claim[s] occurred" in the Eastern District of Kentucky. Only a few tangential acts/events are alleged to have occurred in the Middle District of Tennessee. Consequently, the Court finds that venue does not lie in this District under 28 U.S.C. § 1391(b)(2).

However, RICO claims have a special venue statute, 18 U.S.C. § 1965 (1994), which states in part:

> (a) Any civil action or proceeding under this chapter against any person may be instituted in the district court of the United States for any district in which such person resides, if found, has an agent, or transacts his affairs.
>
> (b) In any action under section 1964 of this chapter in any district court of the United States in which it is shown that the ends of Justice require that other parties residing in any other district be brought before the court, the court may cause such parties to be summoned, and process for that purpose may be served in any judicial district of the United States by the marshal thereof.

18 U.S.C. § 1965 (a) and (b).

The only Defendant who resides, is found, has an agent or transacts his affairs in this District is Ernest Williams.[1]

Apparently, Plaintiff does not dispute that venue cannot lie in this District as to his RICO claims against the other fifteen Defendants based on 18 U.S.C. § 1965 (a). Giving Plaintiff's allegations the liberal construction afforded pro se litigants, however, he maintains that venue exists here as to the claims against the remaining Defendants pursuant to 18 U.S.C. § 1965 (b). As expressly stated in the statute, before a district court can summons partied from other districts to answer to a RICO claim, it must find that "the ends of justice" so require.[2] What is required to meet "the ends of justice" requirement under the statute is not crystal clear, but, at a minimum, the Court must determine that there is no other district which has personal jurisdiction and venue over all members of the alleged RICO conspiracy. See Butcher's Union Local No. 498 United Food & Commercial Workers v. ...

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[2] Several Defendants contend that Plaintiff has fraudulently joined Defendant Williams in order to avail himself of the RICO venue statue. As the text of the statute indicates, a district court must have personal jurisdiction over at least one defendant pursuant to 1965(a) in order to bring the other members of an interstate conspiracy before the court pursuant to 1965(b). See Butcher's Union Local No 498, United Food & Commercial Workers v. SDC Inv., Inc., 788 F.2d 535, 539 (9th Cir. 1986). Since it is not essential to the Court's resolution of the pending motions, the Court expresses no opinion on this issue.

[2]Even then, a district court is not mandatorily required to bring the other parties before the court, since the statue provides only that the Court "may" cause such parties to be summoned and process be served in other districts. See 18 U.S.C. § 1965 (b).

SDC Inv., Inc., 788 F2d 535, 538-39 (9th Cir. 1986). The Second Circuit, in discussing an assertation of personal jurisdiction based upon 18 U.S.C. § 1965 (b), stated as follows,

> This jurisdiction is not automatic but requires a showing that the "ends of justice" so require. This is an unsurprising limitation. There is no impediment to prosecution of a civil RICO action in a court foreign to some defendants if it is necessary, but the first preference, as set forth in § 1965 (a), is to bring the action where suits are normally expected to be brought. Congress has expressed a preference in § 1965 to avoid, where possible, haling defendants into far flung fora.

PT United Can Co. Ltd. v. Crown Cork & Seal Co., Inc., 138 F.3d 65, 71-72 (2d Cir. 1998).

Based upon the record in this case, the Court finds that the "ends of justice" do not require that the other fifteen defendants be haled into this Court from other districts. First, the entire case can be litigated in the Eastern District of Kentucky, where most of the Defendants are located and almost all the alleged illegal acts occurred. As noted previously, venue is proper in that District and said District Court has personal jurisdiction over every defendant under Section 1965. More specifically, thirteen Defendants live there; Defendant Rushing, who now lives in Knoxville, lived there at the time of the events that led to this lawsuit; and Defendant Williams, who lives in Franklin, Tennessee, represented Plaintiff in that District during his trial there. See Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) (personal jurisdiction requires "certain minimum contacts" with the forum state and "that the maintenance of the suit [against the non-resident defendant] does not offend traditional notions of fair...



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play and substantial justice."). Based upon the facts and circumstances of this case, the Court finds that justice does not

require that this case be litigated here.

Second, even if the Court permitted Plaintiff to litigate his RICO claims here, venue would still be improper as to his Section 1983 and Section 1985 claims because a substantial part of the events giving rise to Plaintiff's claims did not occur in this District (28 U.S. C. § 1391 (b)(2) and Title 18 U.S.C. § 1965 (a) applies only to the RICO claims; not the Section 1983/Section 1985 claims. There has been no suggestion that this Court should dismiss the Section 1983/Section 1985 claims or sever or transfer them to the Eastern District of Kentucky, and proceed to trial here on the RICO claims. Such a course of action would not promote judicial economy and would delay and add additional hardships to the parties. Therefore, for the reasons stated, the Court concludes that venue does not properly lie in this District for Plaintiff's RICO Claims.

Having determined that proper venue does not lie in this District, the Court nest addresses the issue of dismissal or transfer. Title 28 U.S.C. § 1406 (a) provides as follows:

> The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.

As previously noted, this suit could have been brought in the Eastern District of Kentucky, and the venue and personal jurisdiction requirements are satisfied there as to every claim of



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the Plaintiff. Since an outright dismissal might subject Plaintiff's claims to legal defenses under applicable statutes of limitations, the Court finds that it is in the interests of justice to transfer the case to the Eastern District of Kentucky. [3]

For the foregoing reasons, Defendants' Motions to Transfer will be GRANTED, and this will be TRANSFERRED to the United States District Court for the Eastern District of

Kentucky. Defendants' Motions to Dismiss will be DENIED AS MOOT.

An appropriate order will be entered.

s/ Robert L. Echols
ROBERT L. ECHOLS
UNITED STATES DISTRICT JUDGE

[3] Given this disposition, the Court need not address Defendants' other arguments including the contentions of the many Defendants who claim that this Court lacks personal jurisdiction over them. See Pittock v. Otis Elevator Co., 8 F3d 325, 329 (6th Cir. 1983) (Citing Goldlawr, Inc. v. Heiman, 369 U.S. 463 (1962)) (transfer under 1406 (a) is permissable even where there is both improper venue and lack of personal jurisdiction in the transfer or forum).



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**C.O.A. CASE NUMBER: 02-6235**
**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE SIXTH CIRCUIT**

| | | |
|---|---|---|
| **JAMES G. AKERS,** | ) | |
| | ) | |
| Plaintiff-Appellant, | ) | |
| | ) | |
| v. | ) | **MOTION FOR RECONSIDERATION** |
| | ) | |
| | ) | |
| | ) | |
| **CAROLYN P. BISHOP; et al,** | ) | |
| | ) | |
| Defendants-Appellees.) | | |

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ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE EASTERN
DISTRICT OF KENTUCKY-LEXINGTON DIVISION

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**COMES THE PLAINTIFF-APPELLANT**, James G. Akers (hereinafter "Akers"), **without counsel** in strict accordance with Title 28 U.S.C. § 1654 and, pursuant to 6 CIR. R. 27(g) & 6 CIR. R.45(b), respectively, moves this Honorable Court to reconsider Its "ORDER" denying the filing of Akers' "PETITION FOR EN BANC DETERMINATION" as served and filed on May 19, 2003. In support thereof, Akers asserts as follows:

**LEGAL ARGUMENT**

1. On May 19, 2003, Akers timely served and filed his "PETITION FOR EN BANC DETERMINATION" in strict accordance with Title 28 U.S.C. 1654, FRAP 26(a) & (c), 6 CIR. I.O.P. 35(b), FRAP 40(a)(1) & (2), 6 CIR. I.O.P. 40(a) at lines 5 through 9, respectively.

2. **Of paramount importance herein**, and that which Akers relies upon, is the specific language contained within FRAP 26(a) & (c), and FRAP 40(a)(1), respectively, i.e., as follows:

**FRAP 26. COMPUTING AND EXTENDING TIME**

**(a) Computing Time.** The following rules apply **in computing any period of time specified in these rules or in any local rule, court order**, or applicable statute:

(1) **Exclude the day of the act, event, or default that begins the period.**

(2) **Include the last day of the period** unless it is a Saturday, Sunday, [or] legal holiday... (emphasis and clarification added throughout)

**(c) Additional Time After Service.** When a party is required or permitted to act within a prescribed period after the paper is served on that party, **3 calendar days are added to the prescribed period unless the paper is delivered on the date of service** stated in the proof of service. (emphasis added)

**FRAP 40. PETITION FOR PANEL REHEARING**

**(a) Time To File; Contents; Answer; Action by the Court if Granted.**

(1) *Time.* Unless the time is shortened or extended by local rule, **a petition for rehearing may be filed within 14 days after entry of j u d g e m e n t.** (emphasis added)

3. The "**court order**" affirming the "JUDGEMENT" as entered by Judge Jennifer B. Coffman, United States District

Court for the Eastern District of Kentucky-Lexington Division [Exhibit 02-6235-04 hereto] was entered in this Court until May 2, 2003 [see Exhibit 02-6235-25 hereto]; Akers' responsive "PETITION FOR EN BANC DETERMINATION" was served and filed on May 19, 2003 [see Exhibit 02-6235-24 hereto], **seventeen days thereafter**; Akers' "PETITION FOR EN BANC DETERMINATION" was **clearly** timely filed; **and** the Court is **clearly mistaken** in the denial of its timely filing.

4. Moreover, Akers has **thoroughly** researched the Federal Rules of Civil Procedure, Federal Rules of Appellate Procedure, Sixth Circuit Rules, Sixth Circuit I.O.P.'s, **and** Local Rules for the Sixth Circuit and can find absolutely nothing which contradicts, overrides, or in any way conflicts those provisions cited within hereinabove ¶2. If, however, such a conflicting rule exists and can be provided, Akers will be more than willing to accept the Court's decision to deny the filing of his "PETITION FOR EN BANC DETERMINATION" and appropriately proceed with a Petition for Writ of Certiorari with the United States Supreme Court.

## CONCLUSION

(5) It is obvious from the history of the instant case that the United States District Court for the Eastern District of Kentucky, Sixth Circuit Court of Appeals, the Clerks thereof, and/or the staff of the Clerks thereof, are either unfamiliar with the provisions of Title 28 U.S.C. 1654 or just, simply, refuse to accept those provisions. Whichever the case may be, the language of that statute – **as enacted by the United States Congress** – reads as follows:

> "**TITLE 28 U.S.C. § 1654**. In all courts of the United States, **the parties may plead and conduct their own cases personally** or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein." (emphasis added) [see also, Exhibit 02-6235-11, Joint Appendix, page 494 thereof]

There appears to be no room for misinterpretation of, **nor opposition to**, this statute and Akers is determined that – **one way or another** – **it shall be enforced** with respect this case.

**WHEREFORE**, the Plaintiff-Appellant, James G. Akers, **without counsel** in strict accordance with Title 28 U.S.C. § 1654, prays of this Court to: (A) "**RESCIND**" Its "ORDER" denying the filing of Akers' "PETITION FOR EN BANC DETERMINATION" as "untimely"; (B) "**RESCIND**" the mandate prematurely issued by the Court on June 2, 2003; (C) "**STAY**" the mandate in this case until final disposition of Akers' Petition for Writ of Certiorari with the United States Supreme Court; (D) restore the instant case on the docket as an active appeal; & (E) direct that the instant appeal accordingly proceed in strict accordance with the protocol set forth within 6 CIR. R. 35(b).

Respectfully submitted,

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